

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.
DATE: July 27, 2000
PLACE: State Capitol, Room 126

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

STACEY L. HEFFERNAN CSR, RPR
No. 10750

VINE, MCKINNON & HALL (916) 371-3376

A P P E A R A N C E S

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COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI,
Public Member

WILLIAM SHERWOOD,
Representative for PHILIP ANGELIDES
State Treasurer's Office

JOANN STEINMEIER,
School Board Member
Arcadia Unified School District

JOHN S. LAZAR,
Acting Director of Office Planning and Research

CINDI ARONBERG,
Deputy State Controller
Representative for KATHLEEN CONNELL, State Controller
State Controller's Office

HEATHER A. HALSEY,
Legislative Analyst and Associate Deputy
Special Counsel to the Legal Affairs Secretary
Office of Governor Gray Davis
Planning and Research

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAT HART JORGENSEN, Chief Legal Counsel

CAMILLE SHELTON, Staff Counsel

DAVID SCRIBNER, Staff Counsel

NANCY PATTON, Staff Services Manager

PUBLIC TESTIMONY

MARCIA C. FAULKNER, Manager, Reimbursable Projects,
Office of the Auditor/Controller-Recorder,
(For County of San Bernardino)

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PUBLIC TESTIMONY

CEDRICK ZEMITIS, Principal Program Budget Analyst,
Department of Finance

JAMES A. CUNNINGHAM, Legislative Mandate Specialist,
San Diego City Schools, Finance Division
(For San Diego Unified School District)

ROBERT B. RAINES, Testing Program Manager, Testing Unit
Office of the Superintendent, San Diego City Schools
(For San Diego Unified School District)

RICHARD J. KNOTT, Controller,
San Diego City Schools, Education Center
(For San Diego Unified School District)

JEANNIE OROPEZA, Department of Finance

PETE ZERVINKA, Department of Finance

KEITH B. PETERSEN, MPA, JD, President,
Mandate Reimbursement Services, SixTex and Associates
(Representing Claimants on Item # 6 and Representing
Alameda County Office of Education on Item #9)

PAIGE VORHIES, Bureau Chief
State Controller's Office

JEFF YEE, Section Manager, Local Reimbursements,
Division of Accounting and Reporting
State Controller's Office

STEPHEN HUIISH, Vice President,
Sacramento Police Officers Association

DEE CONTRERAS, Director of Labor Relations
City of Sacramento, Office of Labor Relations

ED TAKACH, Labor Relations Officer,
City of Sacramento, Office of Labor Relations

PAMELA A. STONE, Senior Manager/Legal Counsel, DMG Maximus,
California State Association of Counties, SB 90 Group

ALLAN BURDICK, Director,
California State Association of Counties, SB 90 Group

JIM LOMBARD,
Department of Finance

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28

AGENDA INDEX

---oOo---

AGENDA ITEM	PAGE
I Call to Order and Roll Call	06
II Approval of Minutes Item I - June 29, 2000	07
III Proposed Consent Calendar (action)	07
IV Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7 (action) (Witnesses sworn in en masse) A. TEST CLAIMS Item 2 - Property Tax Administration: Schools - CSM-4473-a Item 3 - Property Tax Administration: ERAF - CSM 4473-b Item 4 - Standardized Testing and Reporting Test Claim - 97-TC-23 Item 5 - Immunization Records - Hepatitis B - 98-TC-05 B. INCORRECT REDUCTION CLAIMS Item 6 - School Crimes Statistics and Validation Reporting, Education Code Section 14044 C. PROPOSED STATEMENTS OF DECISION Item 7 - Financial and Compliance Audits, CSM No. 4498/4498A Item 8 - County Treasury Oversight Committees - 96-365-03 Item 9 - Gann Limit Calculation, 97-TC-18	09 24 58 07 76 07
V Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8 (action) A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES Item 10 - Peace Officers Procedural Bill of Rights - (CSM - 4499) B. ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES Item 11 - Not Guilty by Reason of Insanity 98-PGA-10 (CSM 2753) C. PROPOSED REGULATORY ACTION - POSTPONED Item 12 - Staff Report on Public Comment and Proposed Modifications After Close of Public Comment Period; Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 adding section 1183.09 - Dismissals	104 07 **

AGENDA INDEX

---oOo---

AGENDA ITEM	PAGE
VI Executive Director's Report Item 13 - Workload, Governor's Budget, Local Claims Bill, Legislation, Next Agenda, et cetera	131
VII Public Comment	132
VIII Closed Executive Session Pursuant to Government Code Sections 11126 and 17526	132
IX Report from Closed Executive Session	132
X Adjournment	132
Reporter's Certificate	133

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1 BE IT REMEMBERED that on Thursday, the 27th day of
2 July, 2000, commencing at the hour of 9:30 a.m. thereof, at
3 the State Capitol, Room 126, Sacramento, California, before
4 me, Stacey L. Heffernan, a Certified Shorthand Reporter in
5 and for the State of California, the following proceedings
6 were had:

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8 CHAIRPERSON PORINI: All right. I'll call the
9 meeting to order.

10 May I have role call.

11 MS. HIGASHI: Ms. Aronberg?

12 MS. ARONBERG: Here.

13 MS. HIGASHI: Mr. Beltrami?

14 MR. BELTRAMI: Here.

15 MS. HIGASHI: Ms. Halsey?

16 MS. HALSEY: Here.

17 MS. HIGASHI: Mr. Lazar?

18 MR. LAZAR: Here.

19 MS. HIGASHI: Mr. Sherwood?

20 MR. SHERWOOD: Here.

21 MS. HIGASHI: Ms. Steinmeier?

22 MS. STEINMEIER: Here.

23 MS. HIGASHI: Ms. Porini?

24 CHAIRPERSON PORINI: Here.

25 All right. We have a quorum.

26 Since we did not do this last time when we left
27 closed session, I will report that from our closed executive
28 session, after the general meeting on June 29th, the

1 Commission met in closed executive session pursuant to
2 Government Code Section 11126 to confer with and receive
3 advice from legal counsel for consideration and action as
4 necessary and appropriate upon pending litigation
5 noticed on the public notice and agenda and Government Code
6 Sections 11126 subdivision (a) and 17527 to confer upon
7 personnel matters listed on the published notice and agenda.

8 All right.

9 MS. HIGASHI: I'd like to postpone Item 1, which is
10 approval of the minutes, because we recently discovered that
11 the minutes weren't put into your binders, so we'll move onto
12 the proposed consent calendar.

13 And the proposed consent calendar consists of one
14 test claim, Immunization Records, Hepatitis B, 98-TC-05,
15 which is Item 5, filed by the Los Angeles County Office of
16 Education, proposed statement of decision for a test claim;
17 Item 7, Financial and Compliance Audits, CSM No. 4498 and
18 also 4498A, filed by Sweetwater Union High School District
19 and San Diego County Office of Education, Co-Claimants;
20 Item 8, County Treasury Oversight Committees - 96-365-03,
21 County of San Bernardino, Claimant, and I'd like to add
22 Item 9, which is the proposed statement of decision for the
23 denied test claim in the Gann Limit Calculation. This test
24 claim was filed by the -- let me check, Alameda County Office
25 of Education.

26 And, in addition, we also have the adoption of
27 proposed amendment to parameters and guidelines, Item 11, Not
28 Guilty by Reason of Insanity, 98-PGA-10, and it's County of

1 San Bernardino is the requesting party.

2 Recommend these items for adoption on the consent
3 calendar.

4 CHAIRPERSON PORINI: All right. So we have Items 5,
5 7, 8, 9 and 11 on the consent calendar.

6 MS. STEINMEIER: Move approval.

7 MR. BELTRAMI: Second.

8 CHAIRPERSON PORINI: We have a motion and a second.
9 Is there any discussion?

10 (No Response.)

11 CHAIRPERSON PORINI: All right. Hearing none, all
12 those in favor indicate with "aye."

13 (Whereupon Commissioners answered unanimously with
14 aye.)

15 CHAIRPERSON PORINI: Opposed?

16 (No Response.)

17 CHAIRPERSON PORINI: All right. The item carries.
18 Thank you very much.

19 MS. HIGASHI: This brings us to the hearing part of
20 the agenda, and what I'd like to do is request that all of
21 the persons sitting in the audience who plan to be witnesses
22 for Items 2, 3, 4 and 6 to please stand while we administer
23 the oath.

24 Do you solemnly swear or affirm that the testimony
25 that you're about to give is true and correct based upon your
26 personal knowledge, information or belief?

27 (Whereupon the witnesses answered unanimously with
28 "I do.")

1 MS. HIGASHI: Thank you.

2 The first item for hearing is Item 2. Both Items 2
3 and 3 will be presented by staff counsel, Camille Shelton.

4 MS. SHELTON: Good morning.

5 CHAIRPERSON PORINI: Camille, will you hold on a
6 second while we have people come forward.

7 Thank you.

8 MS. SHELTON: This test claim involves Revenue and
9 Taxation Code Section 97, subdivision (g), which eliminated
10 the counties' authority to charge school districts for their
11 share of the administrative costs associated with county's
12 longstanding responsibility of assessing, collecting and
13 apportioning real property taxes for other local agencies and
14 school districts.

15 Although the test claim statute results in the
16 counties absorbing the schools' share of property tax
17 administrative costs, counties are still performing the same
18 property tax activities of assessing, collecting and
19 distributing property tax revenue that the counties have
20 performed since -- before the enactment of the test claim
21 statute.

22 Accordingly, staff recommends that the Commission
23 deny this test claim because the test claim legislation does
24 not impose a new program or higher level of service.

25 Yesterday, the Commission staff received a late
26 filing from the claimant. We have distributed that letter to
27 the Commission members. The letter is dated March 28th,
28 2000.

1 I just wanted to clarify that the Commission's
2 records do not indicate receipt of this letter in March or
3 indicate a receipt of a fax filing on April 3rd as indicated
4 by the mailing list, so we have designated it as a late
5 filing. I will be happy to address this late filing after
6 the parties present their opening statements; however, staff
7 still recommends that the Commission deny this test claim.

8 Will the parties please state their name for the
9 record.

10 MS. FAULKNER: Marcia Faulkner, County of
11 San Bernardino, test claimant.

12 MR. ZEMITIS: Cedrick Zemitis, Department of
13 Finance.

14 CHAIRPERSON PORINI: All right.

15 Would you like to open, Ms. Faulkner?

16 MS. FAULKNER: Good morning. Thank you. I do
17 apologize for the late filing. I believed it had been faxed
18 to the Commission staff on April 3rd, and I had talked to
19 another interested party on that about a week later and they
20 had received both pieces, so I don't know where the problem
21 occurred but I do apologize for the late filing on that.

22 To begin with, what we're dealing with is the shift
23 of property tax administration cost from schools to the
24 county. Ultimately, what we're going to discuss is the shift
25 actually occurred from the state to the counties; but, as a
26 result of this particular test claim legislation, Chapter 66
27 of '93 -- no. I'm sorry -- 1991, Chapter 333 of 1991, the
28 county is now bearing the school district's cost for public

1 education.

2 Since the primary function of schools is public
3 education, the county is now bearing that cost, and, since
4 education is the ultimate responsibility of the state, the --
5 and the state backfilled the schools when they had to pay
6 these costs in 1990, the ultimate shift is occurring between
7 the state and the county.

8 A little bit of discussion here: The staff argues
9 in their analysis that Lucia Mar is not applicable in this
10 particular case; and, in Lucia Mar, as we all know, that's
11 dealing with the shift from the state to schools and it was
12 addressing education costs. So we say Lucia Mar is right on
13 the point. It is dealing with education. It is shifting
14 costs from the state to a local government.

15 Staff is saying, though, that there is no new
16 activities, and Lucia Mar goes on to discuss that the
17 establishment of a new program is a state shift of financial
18 responsibility and that when that shift occurs it actually
19 establishes a new program with respect to that local agency,
20 and, in this case, that's the counties.

21 Before 1991, schools were financially responsible
22 for their share of the property tax administration costs. In
23 our letter, at the late filing, we include an Attachment A,
24 that's from the State Department of Education, commenting on
25 a test claim that occurred in 1992. That was a test claim
26 filed by San Diego Unified requesting state reimbursement of
27 the costs that San Diego Unified had to pay to the counties
28 during 1990 when the schools were chargeable for their

1 property tax administration -- their share of the property
2 tax administration cost.

3 And in that letter -- I don't know if there's a page
4 number associated to it but it's the first page of the
5 Department of Education's letter, which is an attachment to
6 the late filing, at the bottom of the page, in that final
7 paragraph, the letter goes on and, in discussing San Diego
8 Unified's claim, it says, "School districts and county
9 offices of education are automatically compensated for losses
10 of property tax revenue under provisions of Education Code."

11 The point of this letter, and this is on the second
12 page of that letter, in the final paragraph, the Department
13 of Education goes on to say, "Therefore the amount of
14 reimbursement to which San Diego Unified is claiming
15 entitlement was, in fact, never lost by the district. The
16 state made up the property tax collection revenue reduction
17 with state funds pursuant to Education Code Section 42238,"
18 so we are holding that this is not a shift from the schools
19 to the county; this is a shift from the state to the county.

20 There's also disagreement over the state's
21 responsibility for property taxes. This is one of the points
22 presented in the staff analysis. The state position is that
23 because the state doesn't do any work, as regards to property
24 tax administration, the collection, the assessment, the
25 levying of tax rates, they're claiming that this was never a
26 state program and, therefore, it doesn't meet the test claim
27 requirement; however, the state has actually governed the
28 entire process of property taxation at the local level.

1 These are all -- the counties all followed the
2 procedures defined in the Revenue and Taxation Code, the
3 Government Code, the Health and Safety Code, the Education
4 Code, Water Code, and various other statutes that address
5 special districts and other taxing entities.

6 Further, since at least 1978, the state made changes
7 in those laws every year, and, in many cases, there were
8 multiple changes in each year. So, if the state was not
9 directly causing the property tax administration work, I'm
10 not sure what we're going to say about all of these
11 California statutes where the state tells the counties how to
12 do that work.

13 Okay. And, to clarify, too, San Bernardino County
14 does not claim that the property tax administration
15 activities alone constitute the higher level of service; it
16 is those activities which, when coupled with the elimination
17 of reimbursement to the county, allows that reimbursement to
18 fund a totally different activity of public education. That
19 is the basis of our test claim.

20 So we request that the Commission not adopt staff
21 recommendation, to deny this test claim, but, rather, the
22 Commission should approve this test claim because there is a
23 new program imposed on counties, that of public education,
24 and there is a shift of financial responsibility from the
25 state to the counties, not from schools to the counties.

26 Thank you.

27 CHAIRPERSON PORINI: All right. Questions from
28 members?

1 Camille, did you want to comment on the late filing
2 now or --

3 MS. SHELTON: If you prefer that, that's fine.

4 CHAIRPERSON PORINI: Okay.

5 MS. SHELTON: Basically, in the late filing, the
6 claimant is arguing that the test claim statute has shifted
7 the financial responsibility of funding public education of
8 the state to the schools -- or, excuse me, to the counties,
9 but this test claim is not about funding public education; it
10 simply involves the administrative costs associated with
11 assessing, collecting and distributing local property tax
12 revenues which has been the sole responsibility of the
13 counties since Proposition 13.

14 The claimant has raised Education Code Section
15 42238, and analysis of that was included in the staff
16 analysis on page 13, and, what that statute does, it does
17 provide that a state will give additional general aid to
18 school districts when a district is not allocated enough
19 local property tax revenue to satisfactorily meet their
20 required revenue limit. Even if the state contributed money
21 for the administrative fee in this case -- this case is very
22 much like the case cited on page 12 of the staff
23 analysis, which is the County of Los Angeles versus the
24 Commission on State Mandates case.

25 In that case, that case involved the Penal Code
26 Section 987.9 which provided that indigent defendants in
27 capital cases could request funds for experts and other
28 ancillary services. And, prior to that year, the costs of

1 the program were reimbursed through the county by the state
2 through annual appropriations but then the state stopped
3 providing that money.

4 And, in that case, the counties argue that there was
5 a shift in cost from the state to the local agency, and the
6 court disagreed with that, and the court specifically said
7 here, "The program has never been operated or administrated
8 by the state." The counties have always had a legal and
9 financial responsibility for implementing the procedures
10 under that code section. The same has occurred here. The
11 state has never operated the assessment and distribution of
12 local property taxes; those have been responsibilities borne
13 by the counties, so, even if the counties did receive money
14 from the state, that was simply a reimbursement scheme and
15 there has been no shift.

16 CHAIRPERSON PORINI: Questions?

17 Did you have a question, Mr. Beltrami?

18 MR. BELTRAMI: No.

19 MR. LAZAR: Well, I was going to ask for
20 Mr. Beltrami's comments on that, knowing that he has been
21 involved with county government.

22 MS. STEINMEIER: That's true.

23 MR. BELTRAMI: No comment.

24 CHAIRPERSON PORINI: All right.

25 MR. BELTRAMI: I have a question, though.

26 CHAIRPERSON PORINI: Yes, Mr. Beltrami.

27 MR. BELTRAMI: Camille, you keep referring to the
28 counties' responsibilities stemming from Prop 13.

1 Doesn't it go back much further than that?

2 MS. SHELTON: I believe that it does. I didn't
3 incorporate it into the --

4 MR. BELTRAMI: In fact, it goes back, maybe, to 1850
5 or something.

6 MS. SHELTON: I think that it does, but, also, the
7 fact that I believe that school districts also have the
8 responsibility of property taxes before Prop 13 was enacted.
9 It gets a little bit more complicated. I just didn't go into
10 the full history of that.

11 MR. BELTRAMI: That's fine.

12 CHAIRPERSON PORINI: All right. Thank you,
13 Mr. Beltrami.

14 Mr. Zemitis?

15 MR. ZEMITIS: Thank you. We concur with the staff
16 analysis and we believe that the test claim should be
17 rejected. We believe that there's been no shift in funding
18 from the state to the local agency, rather, the shift was
19 from one local entity, of schools, to another, the county.
20 The state doesn't fund or operate county property tax
21 administration as was mentioned.

22 Indeed, prior to 1978 and prior to 1975, and I also
23 don't know the exact date all the way back in the 1800s or
24 early 1900s when the specifics changed, but the counties have
25 been responsible for property tax administration all along
26 and not the state, and so we believe that there's no mandate
27 in this case. We don't believe Lucia Mar applies because
28 those schools who were, in fact, state operated and then the

1 counties were required to pay to send their students there,
2 so we don't believe that Lucia Mar applies and we urge that
3 this claim be rejected.

4 CHAIRPERSON PORINI: All right. Any questions?

5 MR. BELTRAMI: Mr. Zemitis --

6 CHAIRPERSON PORINI: Mr. Beltrami?

7 MR. BELTRAMI: Thank you, Madam Chair.

8 Doesn't Prop 13 really involve the state much more,
9 though, in property tax, the whole property tax system, that
10 the flexibility the local governments had doesn't seem to be
11 there anymore?

12 MR. ZEMITIS: The flexibility to raise or change the
13 property tax was enacted by Prop 13 voter-approved
14 constitutional amendment that set in statute the specific
15 property tax rate and so that enactment doesn't allow local
16 entities to change their property tax rates, so, to that
17 extent, this voter-approved constitutional amendment did sort
18 of set in stone, as it were, the actual percentages of who
19 gets what.

20 MR. BELTRAMI: But then when the state, in the early
21 90s, redirected property tax from one local entity to
22 another, doesn't that indicate that the state is much more --
23 that it isn't just a local county operation?

24 MR. ZEMITIS: But the administration of the property
25 taxes has always been local, and still is, and, in the shift
26 prior, or just after Prop 13 passed, revenues decreased
27 because the property tax rate decreased. The state had
28 surplus monies and chose to fund schools at a higher level

1 and allow counties to retain extra property taxes, but that
2 had nothing to do with the property tax administration costs,
3 so it was simply the state providing extra money to schools
4 so that locals could keep more property taxes. And, then, in
5 the early 90s, that was essentially shifted back, so schools
6 now get approximately 53 percent of each property tax dollar,
7 and, prior to Prop 13, they also got approximately 53
8 percent.

9 MR. BELTRAMI: Thank you, Madam Chair.

10 CHAIRPERSON PORINI: Sure.

11 MS. STEINMEIER: I have a comment.

12 CHAIRPERSON PORINI: Yes.

13 MS. STEINMEIER: In Ms. Faulkner's discussion of the
14 school district's cost and property tax administration, it
15 was only one year, it was 1991 to 1992, then it went back the
16 other way. So it was a -- I guess you could call it an
17 aberration, because, prior to that, counties were
18 collecting -- from Prop 13, to 1991, counties were collecting
19 school district monies and reapportioning them back to them,
20 and so I think the argument that, all the sudden, school
21 districts were, you know -- it was a one-year event, to be
22 absolutely honest with you.

23 And I agree with the staff analysis, that it was
24 really an internal local shift and that the state really did
25 not even do it. If anybody had anything to do with it, it
26 was the people of California, when we adopted Prop 13. And,
27 unfortunately, the Commission -- that's an area we cannot get
28 into. We don't do anything about enactments of the people;

1 only the state legislature.

2 So, reluctantly -- I understand the problem, and
3 it's an ongoing problem, hopefully, it'll be resolved, that
4 local governments are always in a good fight over the local
5 property tax, as well as its administration, and I'm afraid
6 that this case is not going to solve it forever, I wish it
7 would, but the state legislature is going to have to step in
8 and do something.

9 In the meanwhile, the Commission needs to move
10 forward with this case, and I would like to move approval of
11 the staff analysis.

12 CHAIRPERSON PORINI: All right. We have a motion.

13 Do we have a second?

14 MS. HALSEY: (Ms. Halsey nods head.)

15 CHAIRPERSON PORINI: We have a motion and a second
16 by Ms. Halsey.

17 Ms. Faulkner, you had comments that you wanted to
18 make?

19 MS. FAULKNER: I'd like to make two comments with
20 respect to what Commissioner Steinmeier said and
21 Mr. Beltrami.

22 First of all, the fact that this only occurred --
23 the fact that we only got reimbursement in 1990 really has
24 not historically played a part in this process of state
25 mandates determination. Lucia Mar is the first one that came
26 out and said: In order to determine if there's a mandate,
27 you look at the law immediately in effect before the mandated
28 legislation. And this Commission has, in fact, made

1 determinations based upon that principle over the last eight
2 years that I've been associated with this process.

3 The second point is that there's the argument that
4 the state's not administering the property taxes. Since, at
5 least, 1978, counties have had to, very closely, follow all
6 state direction. Counties cannot make any choices other than
7 staffing choices and budgeting choices, but, when it comes to
8 the actual procedures, those are so very clearly laid out in
9 state statute that counties have no discretion as it comes to
10 actually how we do property taxes and how we distribute
11 property taxes and how we assess property for property
12 taxation purposes.

13 And that's further supported because the counties
14 get audited by two state agencies to make sure we're
15 following those laws. One that I know of is the State Board
16 of Equalization. It goes down and audits all the county
17 assessor's offices on a regular basis to make sure they're
18 applying the state's interpreted requirements for the
19 assessment of property, throughout the counties, and to make
20 sure it's all uniform between the counties.

21 The other point is that the state controller,
22 themselves, comes down and audits counties to make sure we're
23 doing things properly, in the auditor's office, at least, in
24 the way of calculating tax rates, distributing money, making
25 sure we give the schools all their share of the money, so
26 that it's less, then the state has to kick in for public
27 education. So we're audited and we're required to comply
28 with the state statutes. I don't see that as discretionary.

1 CHAIRPERSON PORINI: All right.

2 Mr. Burdick, you've joined us.

3 MR. BURDICK: Chairman Porini and Commissioners, I'm
4 Allan Burdick on behalf of the California State Association
5 of Counties.

6 Some of the last comments kind of bothered me a
7 little bit and I thought I'd -- it seemed like because we
8 have some members and others that agreed with
9 Ms. Steinmeier's comment about -- that this is a local issue,
10 this is not a local issue; this is an issue that became a
11 state statute that essentially limited counties' ability to
12 recover that money.

13 And if we kind of look at -- since we're talking
14 about history, in looking at the history of this, we first
15 look at Prop 13 which limited the ability of local government
16 to be able to increase their salary -- their property taxes
17 to get the money. The following year -- the spirit of Prop
18 13, Prop 4, that's what gave you the provisions on state
19 mandates during the constitution. That was done to say: We
20 want to protect local government from any costs being shifted
21 for new programs or increased levels of service onto it by
22 the state.

23 So then the question comes: Is this a new program
24 or increased level of service? And I think the argument that
25 we believe is that Lucia Mar said that a cost that is shifted
26 by the state is the same as a program, and we clearly see
27 this as a shift in the cost. Without Senate Bill 1333 of
28 1991, there would have been no shift in cost, and that

1 cost -- then the counties would have continued to be able to
2 go on and to recover those costs that they had, or they would
3 not even had some new costs of calculation that were required
4 by Senate Bill 1333.

5 So I think that's our whole argument, that if the
6 legislature had not chosen to pass legislation, we would not
7 have these costs. And that's what this whole program is
8 about. You pass the statute. Does that statute -- because
9 it's done at the discretion of the state, either the
10 legislature or the administrative branch, obviously. The
11 governor, obviously, has to sign the bill, but that is the
12 purpose. Did the state take an action at its own volition,
13 and, as a result of that action, did it result in an
14 increased level of costs to local government which is a
15 result of a new program or increased level of service?

16 And we're saying that Lucia Mar makes that cost fit
17 the definition of what is a new program or increased level of
18 service. I don't think this -- this is not a local
19 government issue. This is not a bill or anything that we're
20 fighting, or a proposal, between school districts and
21 counties anyplace; this is something that the state did
22 because they were in difficult financial times, in 1991, and
23 were looking for ways for them to be able to save money, and,
24 obviously, by reducing costs on school districts -- as
25 mentioned, that they had less responsibility for backfill.
26 And, don't forget -- let's see. If I remember, in '91 --
27 well, anyway, that really doesn't make much of a difference.
28 But, anyway, I just wanted to get that in place again.

1 If it wasn't for the action of the legislature, we
2 would have never had this increased cost, so this is not an
3 issue between local government.

4 Thank you.

5 CHAIRPERSON PORINI: All right.

6 Ms. Shelton, you were shaking your head there. Did
7 you want to --

8 MS. SHELTON: I just wanted to respond to a couple
9 of points.

10 First, you know, there's been a lot of discussion
11 about the Lucia Mar case, and that case did reiterate that
12 there has to be a new program or higher level of service for
13 there to constitute a reimbursable state mandated program.
14 That case dealt with a shift of funding but it also said that
15 every time the legislature imposes additional costs, or the
16 local agencies incur additional costs, that doesn't mean
17 that it's reimbursable at all times.

18 There was a shift in funding in that case but of a
19 state program to the counties in that case, or the school
20 districts in that case. Here -- and the court reiterated
21 that immediately before the test claim statute in Lucia Mar
22 the state had full administrative responsibility of the
23 program and they fully financed the program. In this case,
24 that's not true. The state has not administered local
25 property taxes before the enactment of this test claim
26 statute. So the Lucia Mar case is not on point.

27 CHAIRPERSON PORINI: All right. Any questions from
28 members?

1 (No Response.)

2 CHAIRPERSON PORINI: We have a motion and a second.

3 All right. May I have role call.

4 MS. HIGASHI: I'll start with Ms. Steinmeier today.

5 Ms. Steinmeier?

6 MS. STEINMEIER: Aye.

7 MS. HIGASHI: Ms. Aronberg?

8 MS. ARONBERG: Yes.

9 MS. HIGASHI: Mr. Beltrami?

10 MR. BELTRAMI: Yes.

11 MS. HIGASHI: Ms. Halsey?

12 MS. HALSEY: Aye.

13 MS. HIGASHI: Mr. Lazar?

14 MR. LAZAR: Aye.

15 MS. HIGASHI: Mr. Sherwood?

16 MR. SHERWOOD: Aye.

17 MS. HIGASHI: Ms. Porini?

18 CHAIRPERSON PORINI: Aye.

19 All right. Thank you very much.

20 MS. HIGASHI: Item 3.

21 MS. SHELTON: Item 3 involves a test claim amendment

22 to Revenue and Taxation Code Section 97.5 which deleted

23 subdivision (d)(3) from that section. As a result of the

24 test claim statute, counties are no longer able to charge

25 school districts an administrative fee for establishing and

26 distributing the Educational Revenue Augmentation Funds

27 (otherwise known as ERAF) to school districts.

28 Staff recommends that the Commission deny this claim

1 since the Commission has already adopted a prior final
2 decision on the same statute in question. Under the
3 Commission's prior decision, the Commission recognized that
4 counties no longer have the authority to charge school
5 districts the administrative fee for collecting and
6 distributing ERAF funds. Thus, counties are currently
7 eligible under existing parameters and guidelines for
8 reimbursement of such costs.

9 Will the parties please state their names for the
10 record.

11 MS. FAULKNER: Marcia Faulkner, County of
12 San Bernardino, test claimant.

13 MR. BURDICK: Allan Burdick on behalf of the
14 California State Association of Counties.

15 MR. ZEMITIS: Cedrick Zemitis, Department of
16 Finance.

17 CHAIRPERSON PORINI: All right. Ms. Faulkner, would
18 you like to open?

19 MS. FAULKNER: Thank you. And I'll have to do some
20 shifting of gears here for a minute, totally different
21 argument.

22 This test claim is about the ERAF portion of the
23 property tax administration costs, and the actual statute
24 that drives that is Chapter 66 of '93 which deleted a
25 provision that was added in 1992, first of all, defining the
26 ERAF shift and also stating that the funds shifted to ERAF
27 were subject to having to pay its proportionate share of the
28 property tax administration costs. That was the scenario in

1 '92. '93 came along and deleted that part where the ERAF had
2 to continue -- actually, ERAF no longer had to continue
3 paying its proportional share of the property tax
4 administration. I think there's a couple of things going on
5 here.

6 I think, first of all, there's a miscommunication, I
7 think, between Commission staff and us. We appear to keep
8 repeating all the same arguments over and over again, but I
9 think we're arguing two different points, and what I wanted
10 to draw your attention to is the Commission staff claim,
11 first of all, that this test claim is not a test claim
12 because the matter had already been addressed when the County
13 of Los Angeles, in 1994, filed a test claim and successfully
14 got reimbursement for the activities associated with creating
15 the ERAF fund and dispersing the funds.

16 And I'd like to draw your attention to page 7 in the
17 draft staff analysis -- or in the staff analysis, in the
18 middle of the document, the paragraph that starts out, "The
19 legislature" and actually going down to right around the
20 middle of that paragraph to where it said, "The legislature
21 recognized existing law and established a limited exception
22 in Section 97.5 subdivision (d)(3) by allowing counties to
23 collect from school district property tax revenue those
24 administrative costs associated with establishing and
25 distributing the ERAF to schools"; we are not addressing
26 those activities.

27 Section 97.5 not only added the requirement that
28 schools -- in 1992, that schools or the ERAF fund pay its

1 proportion of the property tax administrative cost for the
2 laws that were enacted along with the creating of the 1992
3 ERAF fund, but section 97.5 of the Revenue and Taxation Code
4 also required the ERAF fund to pay for all of the base
5 property tax administration costs that had nothing to do with
6 the ERAF calculations and distribution.

7 So I'm kind of thinking maybe the staff is saying
8 that this is the same thing as L.A., because L.A. was dealing
9 with part of it, but our test claim is dealing with a base
10 amount that the property tax administration duties that we
11 were performing before the ERAF part, so I'm not sure if that
12 clarifies, but, where the staff is recommending denial
13 because this is no test claim, I think we're talking about
14 two different things, so I'd like to give you a little bit of
15 history on this.

16 First of all -- and I'll try not to repeat the stuff
17 from the previous test claim, but, beginning in 1990,
18 counties were able to charge all taxing agencies for all of
19 their property tax administration costs, and that was added
20 by Revenue and Taxation Code 97. And those administration
21 costs, at that time, dealt with all of the costs at the
22 county assessor's office, the county auditor's office, as it
23 relates to property taxation, and the county tax collector's
24 office.

25 In our county, for that year, our property tax
26 administration costs were 12 million dollars. And, at that
27 time, we received reimbursement from the school districts of
28 30 percent of those costs, and the county bore a share of

1 about 35 percent, cities bore -- their share was about 20
2 percent, and special districts was about 15 percent. But,
3 when the county created an ERAF fund in 1992 and actually
4 shifted dollars away from those local tax dollars away from
5 those local entities, the ratios became totally different.

6 The county share went from 35 percent down to about
7 20 or 25 percent; the cities went down, the special districts
8 went down. The school districts remained about comparable to
9 where they were the year before, about 30 percent, and the
10 ERAF fund, now, constituted 25 percent of those
11 administration costs when you look at the relationship
12 between the property tax dollars they were getting to the
13 total property tax dollars of the entire tax role.

14 So, in 1992, ERAF did pay for that 30 percent of our
15 costs. In 1993, that that piece was eliminated. And,
16 basically, the legislature took away our ability to charge
17 ERAF for those county costs, all county costs, not just the
18 piece of L.A.'s test claim.

19 So L.A.'s test claim addressed additional work that
20 was added in 1992. That's additional to the
21 12-million-dollar cost I'm talking about back in 1990, and
22 L.A.'s test claim did not address the base administration
23 costs of that.

24 Also, on page 7, in the citation, I think staff are
25 construing Section 97.5 of the R and T Code to only require
26 ERAF to pay for the administrative costs associated with
27 establishing and distributing the ERAF, and that's in that
28 cite where they talk about the ratio of the amount of

1 property tax has shifted to schools. And this particular
2 section is, in fact -- I think I'm repeating myself. This
3 particular section is, in fact, requiring ERAF to pay for
4 their base amount plus all the new activities.

5 Okay. Also, I'd like to bring your attention to
6 page 8 of the staff analysis, about the middle of the page,
7 the very first paragraph under "Test Claim Statute," the
8 staff is describing what the county is claiming and what
9 we're saying is involving in this, and what the staff writes
10 here is, "As a result, counties are no longer able to charge
11 school districts an administrative fee for establishing and
12 distributing the ERAF." We're not talking about establishing
13 or distributing the ERAF; we're talking about all of the
14 property tax administration costs before the ERAF ever even
15 came into existence.

16 Okay. And then, also, on page 10 of the staff
17 analysis, where the staff describes the claimant's position,
18 about the middle of the page, it's the indented paragraph,
19 starting at, "Our test claim deals with an issue that has not
20 previously been analyzed or decided by the Commission," it's
21 saying that -- we're saying that we're requesting
22 reimbursement for all the other property tax administration
23 activities that were required of counties both before and
24 into ERAF; however, the Commission staff now say, down here
25 in the paragraph on October 3rd, 2000, "The claimant now
26 contends that the elimination of the counties' authority to
27 charge school districts property tax administration fee for
28 establishing the ERAF coupled with the property tax

1 administration activities required of counties before ERAF
2 results, also, in counties paying for public education." Same
3 argument as before.

4 So I'd really like to get beyond the merits of
5 whether this is a valid test claim or not, and that what L.A.
6 County's test claim did is totally different from what we're
7 requesting here, and, then -- so I'd like to get into the
8 issue that, yes, once again, that the state is, in fact,
9 requiring us to pay for public education because the ERAF
10 fund is not paying its proportional share.

11 But, in final note, assuming that we get beyond this
12 point, I'm also not clear but it appears that staff may also
13 be requesting denial based on another reason, and that is
14 that there may be a procedural technicality because we did
15 not include all of the statutes describing all of the
16 property tax administration activities beginning in, say,
17 1978, '79 on through to the current day.

18 We only focused on Chapter 66 of '93 and that's the
19 only statute we talked about in our test claim, because that
20 is the direct cause of the mandate. So, if we are -- if the
21 staff is heading into that technical area, we would request
22 the opportunity to amend our test claim to make sure we get
23 all of the statutes and all of the property tax
24 administration activities included in this test claim rather
25 than to be denied based on a procedural technicality.

26 Thank you.

27 CHAIRPERSON PORINI: Questions from members?

28 Ms. Shelton?

1 MS. SHELTON: Well, there is a confusion. I think
2 we might be interpreting section 97.5 subdivision (d)(3)
3 differently; that might be one of the things. The claimant
4 today is saying that they're trying to get reimbursement for
5 the base amount for the activities, or property tax
6 activities, that were performed before the ERAF statutes were
7 enacted, that, to me, would conflict with subdivision (d)(3)
8 because subdivision (d)(3) acknowledges existing law in
9 Education Code Section 41000 and 84000, and that existing law
10 prohibiting counties from receiving any fees from school
11 districts for collecting, assessing and distributing property
12 tax revenue, so, if she's trying to -- if they're trying to
13 get property tax revenue, the legislature acknowledged that
14 existing law, and I'm not sure -- I think it should still be
15 denied on that ground.

16 If they're talking about -- I mean, if they're
17 talking about other property tax revenue administrative
18 activities, doesn't that go back to Item 2? That's where, I
19 guess, the confusion is. I don't understand what the claim
20 is.

21 CHAIRPERSON PORINI: Mr. Burdick?

22 MR. BURDICK: Yeah. Chairman Porini, Allan Burdick
23 on behalf of California State Association of Counties. It
24 seems like there's two issues.

25 The first issue, I guess, is the question: Is this
26 a test claim that's properly before you? And it seems like,
27 maybe, that matter needs to be decided before we get into
28 specific activities and discussion about whether or not --

1 and, if it is, then, I guess, we can get into discussion
2 about the specific activities, because, at this point, I
3 think, clearly, when this claim was being developed and the
4 County of Los Angeles were developing its test claim some six
5 or seven years ago, it was pretty clear they were separating
6 out the differences between what they were doing, and they
7 were not the same program, but I don't know whether we need
8 to get into those details.

9 If you're going to decide that this is not a test
10 claim -- I'm assuming that if it's not a test claim then it's
11 not properly before you, so I'm a little bit confused. Maybe
12 we can get a ruling or something on procedures on how we
13 should be dealing with this.

14 CHAIRPERSON PORINI: All right. Can we ask staff to
15 comment?

16 MS. HART JORGENSEN: Well, this matter was
17 postponed, originally, to give the claimant time to come
18 forward, to make an amendment, which would have allowed them
19 time to allege the statutes that they're saying now should
20 have been included procedurally, so the test claim is limited
21 to the statutes that are included in that, and now there's
22 reference to statutes that weren't there. And I state,
23 again, that this was postponed in order to amend it, if
24 necessary. So I believe the opportunity has already been
25 given there --

26 CHAIRPERSON PORINI: All right. Ms. Shelton?

27 MS. SHELTON: I guess one other point is: What are
28 they going to get reimbursement for? At least, based on this

1 statute that has been alleged, it's simply reimbursement for
2 the administrative fees that they have lost from the
3 districts' ERAF funds, and those -- that cost is already
4 being reimbursed under the prior P's and G's, and, if there's
5 some other cost that's being alleged, it'd have to stem from
6 some other statute.

7 CHAIRPERSON PORINI: All right. Ms. Faulkner?

8 MS. FAULKNER: A couple points there. With this
9 particular recommendation staff's making, the only
10 recommendation is that this is not a test claim and,
11 therefore, recommends denial on that basis, and that's on
12 page 13 of the staff analysis. But it has not been very
13 clear to me, until this particular document, that there may
14 be a technical issue of not citing all the statutes that
15 address all of the property tax activities.

16 This was postponed for several reasons, including
17 the County of Sonoma's test claim, including a lot of
18 miscommunication but I'm still seeing the major argument
19 today is whether this is a test claim or not. And I'm
20 trying -- if we can get beyond that point, where it is a test
21 claim, then I want to clarify that I did not understand, and
22 I think it's important, that this test claim not be denied on
23 a technicality of not having listed all of the statutes. I
24 listed just the statute that caused the mandate. If we want
25 to go into all those activities, I'd like the opportunity of
26 listing those statutes.

27 CHAIRPERSON PORINI: All right.

28 MS. FAULKNER: Also, too, the 1992 legislation

1 that's mentioned where it talks about "these monies will not
2 be construed to be a shift in financial responsibility," that
3 part that's in section 97.5 is actually there from the 1992
4 law, not the 1993 law, which is the subject of this test
5 claim, so this is pretty confusing.

6 CHAIRPERSON PORINI: Ms. Shelton?

7 MS. SHELTON: We did have, in the staff analysis,
8 that if -- again, I'm still not totally clear on their
9 position, but, if you're alleging additional activities,
10 those additional activities can be included in the existing
11 P's and G's through a P's and G's amendment.

12 MR. LAZAR: Can I ask a question?

13 CHAIRPERSON PORINI: Yes, Mr. Lazar.

14 MR. LAZAR: Thank you.

15 What's the history of this matter before the
16 Commission, since I'm relatively new?

17 MS. SHELTON: Well, it was filed in 1994 with
18 Item 2 as one test claim, and then the claimant requested
19 that the test claim be severed and be separately analyzed,
20 and then it was put on an inactive list for a couple of
21 years, or a year and a half or so, I believe, correct me if
22 I'm wrong, and then -- so a draft staff analysis had been
23 issued and then it was requested to be put on an inactive
24 list; then the Commission put it back on the calendar. And
25 we received a request from the County of Sonoma to postpone
26 the hearing, because they wanted to file additional comments.
27 The claimant also made the same request. So we postponed it
28 from the February 2000 hearing to this hearing today, and we

1 did not receive any comments from the County of Sonoma.

2 Now, in the draft staff analysis, I'd have to look
3 back to see, but I believe in the draft staff analysis we
4 also noted that, although the claimant may be alleging
5 additional activities other than what are activities that are
6 not included under the prior parameters and guidelines, we
7 haven't received notification or notice of what those
8 activities are and where those activities -- or what sections
9 those activities are stemming from, so there's nothing to
10 analyze.

11 MR. LAZAR: What conclusion did you reach by my
12 adding comments from the County of Sonoma?

13 MS. SHELTON: I'm not reaching any conclusion.

14 MR. LAZAR: How about the claimant?

15 MS. FAULKNER: I can't speak for the County of
16 Sonoma. I'm not really clear on that. I did want to
17 comment, though, that I've always seen -- the major issue on
18 this is whether we were duplicating what County of Los
19 Angeles previously addressed in the test claim, and I've seen
20 that as the big show stopper, not whether or not we're citing
21 all the applicable statutes and activities. I have been
22 under the impression that staff has thought we were dealing
23 with those same activities in the County of Los Angeles test
24 claim.

25 CHAIRPERSON PORINI: Did staff want to comment?

26 MS. HART JORGENSEN: Well, I would like to point out
27 that under our regulations, specifically, section 1183
28 subdivision (e), content of a test claim, "All test claims or

1 amendments thereto shall be filed on a form provided by the
2 Commission. All test claims or amendments thereto shall
3 contain at least the following elements and documents," and I
4 point you to subdivision (1), "A copy of the statute or
5 executive order alleged to contain or impact the mandate, the
6 specific sections of a chapter, bill or executive order
7 alleged to contain a mandate must be identified," then it
8 goes on to number two, "A copy of the relevant portions of
9 the state constitutional provisions, federal statutes and
10 executive orders that impact the alleged mandate and a copy
11 of the administrative decisions and court decisions," and,
12 again, specific chapters, article sections, so, just based on
13 the regulations alone, I think it's clear that when a test
14 claim is filed all of the sections that they believe falls
15 under that should be identified and copies of those should be
16 attached. So, again, we'd point out that there was time
17 given to file amendments.

18 CHAIRPERSON PORINI: All right. Ms. Faulkner.

19 MS. FAULKNER: And we thought we satisfied that
20 request because we did cite Chapter 66 of '93 which was the
21 chapter that removed the reimbursement ability, and that, to
22 us, was the critical piece, not, necessarily, all of the
23 other existing California law that was in effect at that
24 time. Chapter 66 of '93 made -- took away our ability to get
25 reimbursement from the ERAF fund. To us, that was the
26 causing agent of this particular mandate.

27 We did not believe that we needed to go cite all of
28 the Revenue and Taxation Codes and the Education Code and the

1 Health and Safety Code and the Streets and Highways Code and
2 all those other codes, that describe what the county
3 auditor's office and the county assessor and the county tax
4 collector have to do, and that's what we end up having to try
5 to include in this test claim.

6 CHAIRPERSON PORINI: All right. We have
7 Mr. Beltrami then Ms. Steinmeier.

8 MR. BELTRAMI: Ms. Faulkner, do you see this as sort
9 of an allied issue with the Sonoma case that we heard?

10 MS. FAULKNER: I certainly see that there's some
11 very close similarities in that the Sonoma case is also
12 talking about the shift of the actual tax dollars to the ERAF
13 fund thus making counties responsible for public education
14 costs.

15 This is not dealing with those tax dollars; this is
16 dealing with whether the ERAF fund is or is not supposed to
17 reimburse the county for the property tax administration
18 cost, so they're kind of parallel but not exactly the same.

19 MR. BURDICK: If I may just say one point.

20 CHAIRPERSON PORINI: Certainly, Mr. Burdick.

21 MR. BURDICK: I'd just like to say one thing that,
22 when this was going through in 1994 at that time, I think
23 that the Los Angeles County -- if my memory serves me right,
24 and I'm not a hundred percent sure on this, but I think -- I
25 believe that both this and the Los Angeles County claim, at
26 that time, were both pending, and, so, at that time, the L.A.
27 County claim, I don't think, had yet been found to be a
28 mandate by the Commission.

1 It had been filed and it had included a series of
2 chapters, including this chapter as one of the chapters and
3 one of the provisions that was included. There was a very
4 large sort of encompassing piece of legislation. And I think
5 at that time the understanding and the operation of the
6 Commission was that in order to include this we needed to
7 file, and San Bernardino County would file, a separate test
8 claim.

9 I think over the last six years there's been a lot
10 of clarification as to the level of specificity that now I
11 think the Commission is looking for, and, at that time, when
12 we were looking at it, we were filing -- saying, if you're
13 filing on a chapter and it's that chapter which requires you
14 to do something new, then, essentially, that was what was
15 intended, because, historically, in the early days, that's
16 how the process worked. But I think in the last eight --
17 anywhere from maybe -- from the beginning of the Commission
18 to when it was created in '85 on, things began to change over
19 that period of time.

20 The only understanding is that in '94, when this was
21 filed, I think the rules of the game were that L.A. had its
22 claim pending, which also cited this but cited a lot of other
23 things and was looking at a different activity, and the
24 feeling was that this needed to be a separate test claim in
25 itself, so San Bernardino, at that time, filed it, then along
26 came Sonoma County with their lawsuit a couple of years later
27 and put this all on hold. So this test claim has had a
28 unique, I think, history; but, at the time when it was filed,

1 I think it was the understanding of San Bernardino County,
2 and the counties generally, that, in order to go after this
3 portion of the ERAF cases without slowing down the L.A.'s
4 case, which was much more technical and specific, that this
5 should be set aside as a separate test claim.

6 So it may have been able to have been included in
7 the L.A. test claim, except that, from their particular
8 standpoint, they were interested in some of the activities at
9 doing the recalculation of the ERAF at that time and so
10 forth, where it was nice and clear and clean and easy to take
11 care of, and they did not want to get into these other
12 issues, and this was then -- this was filed as a separate
13 test claim.

14 So I think, in terms of how we got to this point,
15 unfortunately, now, it's been six years later and we're
16 finally getting around to this issue, we've had a lot of
17 things take place. And I think that's part of our confusion,
18 if this is or is not a test claim that is properly before
19 you. We think it is, because, when it was filed, that was
20 our understanding. And that was -- and we'll probably still
21 look at that. We'll have to go back and look at it and say:
22 Can we file that or should it be amended under the P's and
23 G's?

24 And I guess that's another legal issue is: If, from
25 your standpoint, this hadn't been filed today, would we have
26 to -- and we're going to file it today, would we file it as a
27 test claim or would we file it as an amendment to the L.A.
28 County P's and G's? And that's part of what I'm saying. It

1 wasn't clear, from a ruling standpoint, as to -- you know, is
2 staff saying that if it was filed today should it be filed as
3 an amendment, because part of L.A. did cover provisions in
4 Chapter 66 or would we have to file a new test claim,
5 because that issue was not addressed in that particular
6 statute? So I'm, I think, just a little bit confused, in
7 terms of procedurally.

8 CHAIRPERSON PORINI: All right.

9 Ms. Steinmeier, did you want to ask a question or
10 should we ask staff?

11 MS. STEINMEIER: Well, actually, that's what I'm
12 going to do. I'm going to ask a question of the staff.

13 CHAIRPERSON PORINI: All right. Great.

14 MS. STEINMEIER: Ms. Shelton, in light of what
15 Ms. Faulkner said this morning, would you have written a
16 different staff analysis if you had known what she said this
17 morning?

18 MS. SHELTON: No.

19 MS. STEINMEIER: So it would have been exactly
20 identical?

21 MS. SHELTON: Yes, because nothing has been --
22 nothing, other than this statute, has been cited to you
23 today. You need to have --

24 MS. STEINMEIER: So it's the same statute but she's
25 saying -- and I can see this, from the way you wrote
26 analysis, it sounds to me like you were talking -- you were
27 seeing it as almost identical or congruous with the L.A.
28 County test claim or did you see differences?

1 MS. SHELTON: Well, there may be differences but it
2 hasn't been described exactly what the differences are.
3 We've not received a complete description of what activities
4 they are talking about. I will note, though -- I'm turning
5 back to the test claim narrative, and that is attached as
6 Exhibit H to Item No. 2 on Bates page 25, in the second
7 paragraph, the claimant is explaining what the test claim
8 statute did, and it states that then Chapter 66, Statutes of
9 1993, exempted schools from paying the property tax
10 administration fee on the ERAF funds, and that is what we
11 analyzed.

12 MS. STEINMEIER: Yeah. For one, I'm very confused.
13 I don't know if that necessarily helps. We're kind of in a
14 quandary here because this one languished for so long and
15 trailed the other one; that's what's causing the confusion,
16 unfortunately, for you and the Commission staff, so we need
17 some direction here, and I don't know what that is.

18 CHAIRPERSON PORINI: All right.

19 Ms. Hart Jorgensen?

20 MS. HART JORGENSEN: Yeah. I was just going to
21 comment on the questions. I mean, yes, I guess you'd have to
22 look at the parameters and guidelines and see -- I mean, if
23 you could do amendments to the parameters and guidelines, you
24 could see if that was covered under the test claim statute,
25 that would be one way to go, and, also, if they're not --
26 Camille, can you respond to whether they have been or not?

27 MS. SHELTON: Well, again, I don't know, exactly,
28 what the activities are but one thing I would suggest is

1 for -- if you want to do a P's and G's amendment on page 9 of
2 the staff analysis, we do list the activities or a portion of
3 the activities that are reimbursable under the prior P's and
4 G's. And, if you're talking about activities which stem from
5 those or are consistent with the Commission's prior final
6 decision or consistent with those statutes and that decision,
7 then you can incorporate it as a P's and G's amendment. If
8 it's something that you're talking about that is completely
9 different and relates to completely different statutes, then
10 you would need to amend your test claim.

11 MS. HART JORGENSEN: Or file a new test claim. So
12 you'd have to look and see if it would reasonably stem in our
13 regulations, explain that, for the parameters and guidelines,
14 what activities can be included, if they're not specifically
15 addressed in the decision, and if there's a -- if it can be
16 traced, if there's a flow to those activities that were
17 covered in the statement of decision and the findings of the
18 Commission on the decision.

19 CHAIRPERSON PORINI: All right. Mr. Lazar?

20 MR. LAZAR: Thank you. Can we make that
21 recommendation? Would that be acceptable?

22 CHAIRPERSON PORINI: Well, I think, and staff can
23 correct me, that we need to take some action on this test
24 claim before us today and then the claimants make a
25 determination about whether they want to file a new test
26 claim or an amendment to the parameters and guidelines, so
27 that's their decision to make. We need to take some action
28 on this test claim.

1 MR. LAZAR: Okay. So you basically want an up or
2 down on this and then you'll make your decision? You can't
3 withdraw until --

4 CHAIRPERSON PORINI: I don't think. Let's ask our
5 staff what they're amending this test claim. Paula?

6 MS. HIGASHI: If the test claim is amended today,
7 the reimbursement period would go back one prior fiscal year
8 for the amendments, if the Commission were to find
9 reimbursable state mandated programs for the amendments that
10 are added.

11 CHAIRPERSON PORINI: So it sounds like it's probably
12 cleaner for us to take an action today on this test claim
13 then allow claimants to move forward with whatever action
14 they deem appropriate.

15 MS. HART JORGENSEN: Because the amendment would not
16 date back to the initial time when it was filed.

17 MS. HIGASHI: Correct. The amendment would have had
18 to have been filed prior to the hearing.

19 CHAIRPERSON PORINI: Mr. Burdick?

20 MR. BURDICK: Well, it seems like one of the issues
21 is: How does this relate to the L.A. case? Maybe what we
22 should do is take a month and look at that, come back with
23 what it covered and what this covers, and see whether there's
24 an overlap or not, because I think that was -- you know, if
25 the issue is -- I think Camille has, as I understand it, has
26 indicated that her decision would be dependent on what L.A.
27 County covers and whether or not there's an overlap or not,
28 and I don't think we've done a comparison, recently, between

1 the two.

2 I think maybe we need to just go back and look at
3 what L.A.'s ERAF case did, what it covers and what statutes
4 it was found on and look at this one and come back and say,
5 all right. Here's what this one did. Is this different or
6 not? Should it be an amendment or is it a separate test
7 claim? Because it seems like there's confusion.

8 And I think that the San Bernardino County -- we're
9 not in a position, probably, to remember what L.A.'s case
10 covered and what statutes were included in that and whether
11 or not there is an overlap or whether this is separate,
12 because, at the time, back in '94, when this was filed, I
13 know that both San Bernardino and L.A. County got together
14 and they conspired, if you will, on who was going to do what
15 and they made a determination, at that time, that it was
16 separate six years ago.

17 Today, I don't think anybody recalls, and it sounds
18 like that's a critical issue, and it sounds, to me, like
19 maybe the best action would be just to allow the claimant to
20 go back and to look at L.A. County and look at this and make
21 the determination and look at what the staff looked at to see
22 whether or not this is one and the same or two separate test
23 claims, because --

24 MS. HART JORGENSEN: But what you're talking about
25 now would be the procedure to see if you want to file an
26 amendment to the parameters and guidelines, when you say you
27 want to look at the prior decision, so you'd be looking at
28 the activities, and that's something that you could do now.

1 You're not precluded from doing that, no matter what the
2 outcome of this case is.

3 MR. BURDICK: Well, no, because Ms. Shelton said it
4 has to be consistent with what was found and so we don't know
5 whether or not this is or is not consistent with the
6 statement of decisions and the statutes that were in there.

7 MR. BELTRAMI: How much time would it take you to do
8 this analysis?

9 MS. FAULKNER: A week or two to write it out.

10 MR. BURDICK: We need to sit down and look at the
11 L.A.'s case, so it'll probably take a few weeks.

12 CHAIRPERSON PORINI: Ms. Shelton?

13 MS. SHELTON: I just wanted you to know that the
14 staff's position has never changed. The draft staff analysis
15 was issued in July of 1998, and we incorporated a copy of the
16 prior P's and G's at that time, and so we have never changed
17 our position. This is not a new issue. It's been around for
18 a couple of years.

19 MR. BURDICK: But the whole question about is it
20 consistent with the statement of decision and what was
21 covered is new, I mean, in a sense of whether or not they are
22 covered or not covered, can this be a stand-alone test claim
23 or does it have to be an amendment the P's and G's? And I
24 think if you look at that and make that analysis, nobody in
25 this room can answer that. And I think at the time, as I
26 say, both L.A. and San Bernardino were working together and
27 were communicating when they filed those separate test claims
28 and they believed they were separate.

1 CHAIRPERSON PORINI: All right. Maybe what we
2 should do is let members ponder on that and let's ask for
3 Mr. Zemitis to give his testimony. He's been sitting
4 patiently while we discuss this.

5 MR. ZEMITIS: Thank you. Cedrick Zemitis,
6 Department of Finance.

7 We actually concur with the staff analysis. We
8 believe that the Revenue and Taxation Code sections were the
9 same as the L.A. County case. And, on page 9 of the staff
10 analysis, it does -- in bold highlights there, Chapter 66
11 requires counties to, among other things, administer new
12 property tax revenue allocations to school districts without
13 authority to charge school districts for associated
14 administrative costs, so we considered that as being included
15 in the L.A. case, and so -- but we don't see where there are
16 differences here.

17 In addition, we're not sure what administrative
18 costs there could have been related to ERAF prior to any ERAF
19 statutes simply by definition, and so we concur with staff's
20 analysis and we recommend that this claim be denied.

21 CHAIRPERSON PORINI: All right. Questions from
22 members?

23 (No Response.)

24 CHAIRPERSON PORINI: Do we have a motion?

25 MR. BELTRAMI: Madam Chairman, I would move to
26 continue this item for one month.

27 MS. STEINMEIER: I'll second that.

28 CHAIRPERSON PORINI: All right. We have a motion

1 and a second.

2 Is there any further discussion?

3 (No Response.)

4 CHAIRPERSON PORINI: May I have roll call.

5 Mr. Sherwood?

6 MR. SHERWOOD: Maybe if we're going to continue it

7 for one month, what are we asking to be done during that

8 month?

9 MS. SHELTON: I don't know.

10 CHAIRPERSON PORINI: We need some clarification.

11 MR. BELTRAMI: Well, it's going to give the

12 claimants the opportunity to do the evaluation that they

13 talked about. They may want to voluntarily withdraw this

14 issue, if they can, and go to the P's and G's on the L.A.

15 case, that's one possibility; the other possibility is come

16 back and push their existing claim.

17 I frankly think of this as the stepchild of the

18 ERAF. I've already voted on that once. My position really

19 hasn't changed, so I'm probably not going to be in the

20 majority on whatever vote we take but I really think that the

21 folks here should have the opportunity to take one more look

22 at this thing. It's been dragging on for, what, eight years

23 as it is.

24 MS. HALSEY: I have a procedural question.

25 CHAIRPERSON PORINI: All right.

26 Ms. Halsey.

27 MS. HALSEY: Am I correct, when the claim is brought

28 before us, the claim should be fully stated, what's being

1 claimed, and the law or the provision that we're talking
2 about should be included in the claim and we address that and
3 only that?

4 CHAIRPERSON PORINI: And I believe that that was
5 what Ms. Hart Jorgensen read to us from the regulations.

6 MS. HALSEY: Then I don't understand why there's
7 confusion, and I don't see how staff hasn't addressed what
8 has been raised.

9 CHAIRPERSON PORINI: All right. We have --

10 MR. BELTRAMI: We have some confusion from our own
11 staff.

12 CHAIRPERSON PORINI: All right.

13 Ms. Shelton?

14 MS. SHELTON: Well, let me just note that if you
15 took action on this claim today, that would not prevent the
16 claimant from filing another test claim, and, if the
17 Commission were to determine that that was a reimbursable
18 state mandated program, the reimbursement period would also
19 go back to the prior fiscal year. They can also file -- that
20 would not prevent them from filing a P's and G's amendment.
21 So, if there is action from the Commission today, they can
22 still do those two things.

23 MR. SHERWOOD: How would that impact --

24 CHAIRPERSON PORINI: Mr. Sherwood?

25 MR. SHERWOOD: I'm sorry, Madam Chair.

26 How would that impact the claimants financially, if
27 it was found to be a mandate?

28 MS. SHELTON: Well, if they are alleging other

1 activities, which it appears that they are alleging, it's not
2 included in this claim. So we can't -- there's been no
3 analysis of that and so there cannot be a decision on that
4 today. The only impact that it would have would be on their
5 ability to either withdraw this claim or to amend this claim,
6 and, if they wanted to amend this claim, it wouldn't make a
7 difference for a reimbursement period.

8 MR. SHERWOOD: Okay. That's true.

9 MS. FAULKNER: I think there's --

10 CHAIRPERSON PORINI: All right.

11 Ms. Faulkner?

12 MS. FAULKNER: It's my understanding that because we
13 filed this test claim in December of '94, that the financial
14 results of this would go back and cover fiscal year '93-'94
15 through today. If we did this as an amendment -- if this got
16 stopped and we did this as an amendment to the P's and G's,
17 we could only go back to --

18 MR. BURDICK: '99-2000.

19 MS. FAULKNER: '99-2000 or '98-'99 at the very
20 earliest.

21 CHAIRPERSON PORINI: Staff is shaking their head.

22 MS. SHELTON: That's correct, what you're saying.

23 But, if you were to file a test claim amendment, that
24 amendment and those analyses of whatever code sections that
25 would be alleged would only go back one prior fiscal year.
26 So, if you filed the amendment today, it would only go back
27 to the '99-2000 --

28 MR. SHERWOOD: I think that --

1 CHAIRPERSON PORINI: Mr. Sherwood?

2 MR. SHERWOOD: Just following that up, I need to

3 make it a little more clearer for my mind. Right now, it

4 goes back to '94?

5 MS. SHELTON: Right.

6 MR. SHERWOOD: If they file a new claim, it would

7 not go back to '94, would it?

8 MS. SHELTON: Right.

9 MR. BURDICK: That's where we lose.

10 MS. SHELTON: At the time this test claim was filed,

11 the Government Code sections did not allow the reimbursement

12 period to go back to the original filing for amendments; that

13 Government Code section has been changed, but it was a recent

14 change last year, but that -- the test claim was filed before

15 that change in the Government Code.

16 So, in other words, they don't get the benefit of

17 that. If they file an amendment to the test claim, that

18 amended section, those additional code sections would only

19 be -- reimbursement would only go back to the prior fiscal

20 year of the date of their amendment filing.

21 MR. SHERWOOD: What if they file a new claim?

22 MS. SHELTON: It's the same thing. If they file a

23 new claim, it would go back to the prior fiscal year, so it

24 really doesn't make a difference.

25 MR. SHERWOOD: But it seems like it would make an

26 impact, though, financially to the claimants, if we were to

27 follow your conclusion here. If they filed a new claim,

28 basically they would be unable to claim costs for those

1 years, '94 through '99.

2 MS. SHELTON: Can you repeat that?

3 MR. SHERWOOD: I'm trying to get back to when the
4 claim took effect. This current claim that we're looking at
5 takes effect in '94.

6 MS. SHELTON: Right.

7 MR. SHERWOOD: Okay. And which they can file costs.

8 MS. SHELTON: Right.

9 MR. SHERWOOD: Now, if they file a new claim, they
10 could only go back to '99?

11 MS. SHELTON: That's right. That's correct.

12 MR. SHERWOOD: So am I missing something?

13 MR. BURDICK: I think what Camille is trying to say
14 is that she is assuming that if we find anything that's in
15 there, it would have to be an amendment; it's not part of
16 what was filed. We disagree with that, and that's why we
17 think there still is an opportunity that this could go back
18 to '94, and that's what we're saying is that if we looked at
19 L.A. County's ERAF case, we look at this, what was presented,
20 we probably would need to present almost like a matrix or
21 something to show the duties and activities and where they're
22 separated, because it's a complicated thing, and say, "Here's
23 the piece and this is why it was done"; then Camille can look
24 at that and decide whether or not she believes it is legally
25 covered in that test claim that was filed or not.

26 She, I think, has taken the position now that she
27 does not believe that it probably would be because she's
28 already examined it. We don't agree with that. But we think

1 we just may not have communicated it clearly, but, hopefully,
2 it's covered. We may have come to the same conclusion that
3 Camille does that maybe it wasn't, but we're confused.

4 CHAIRPERSON PORINI: All right.

5 MS. HART JORGENSEN: I want to do a summary. If we
6 found that the section alleged here, 97.5, constituted a
7 mandate, it would go back to the filing period. That period
8 would be covered. But, if there was an amendment right now,
9 if there was an amendment adding other code sections, we have
10 the hearing. That amendment with other code sections that
11 may or may not be a mandate would not go back to the original
12 filing period. They would only go back within the first
13 year. So he's correct; it would go back to the original
14 filing period, only if you found the mandate for section
15 97.5.

16 If there was an amendment, the amendment -- whether
17 they filed a new test claim or whether they did an amendment
18 right now, it would only go back to the prior fiscal year, so
19 it would be the same difference.

20 And I want to read to you from section 17557. It
21 indicates, "The claimant may, thereafter" -- it talks about
22 filing a test claim. "The claimant may thereafter amend the
23 test claim at any time prior to a Commission hearing on the
24 claim without affecting the original filing date as long as
25 the amendment substantially relates to the original test
26 claim."

27 We've had the hearing. By virtue of having the
28 hearing, the die is cast on this, so it doesn't matter what

1 you would do. And, also, again, they're not precluded from
2 filing an amendment to the P's and G's. They could have
3 someone working on that right now whether or not this test
4 claim is decided.

5 MR. LAZAR: We could put it over, then, and it
6 wouldn't be to their detriment?

7 CHAIRPERSON PORINI: It would be a detriment.

8 MR. LAZAR: It would be?

9 CHAIRPERSON PORINI: Yes, because we are having the
10 hearing today.

11 MR. LAZAR: We don't do that at city council
12 meetings?

13 CHAIRPERSON PORINI: There are some differences
14 between local government and the state government.

15 All right. We have a motion and a second before us.
16 Is there any further discussion?

17 MS. HALSEY: I'd like to make a substitute motion.

18 CHAIRPERSON PORINI: All right. Ms. Halsey, a
19 substitute motion is always in order.

20 MS. HALSEY: It would be to adopt the staff's
21 recommendation.

22 CHAIRPERSON PORINI: All right. We have a
23 substitute motion to adopt staff's recommendation to deny
24 this test claim.

25 Is there a second?

26 CHAIRPERSON PORINI: I will second that.

27 Discussion?

28 MS. STEINMEIER: I think if we're going to make a

1 mistake here, I'm going to error on the side of allowing the
2 claimant -- now that some confusion has been identified
3 anyway, and I don't know if we have a clarification, but we
4 have identified where the conflict or confusion is, so I'd
5 guess I'd rather error on the side of allowing them to get
6 one more shot at trying to explain it to us and to staff.

7 Failing that, we will have to act, but I feel we
8 ought to give them a month, so I would be opposed to the
9 substitute motion.

10 CHAIRPERSON PORINI: All right. Further discussion?

11 MS. HALSEY: I guess --

12 CHAIRPERSON PORINI: Ms. Halsey?

13 MS. HALSEY: My only confusion is why there's
14 confusion, because I'm assuming most of the people involved
15 in bringing these claims are attorneys. I mean, you have to
16 state a claim and support it, is that not true, or am I --

17 MR. BURDICK: Unfortunately, we have no attorneys
18 at the table.

19 MS. HALSEY: Okay.

20 CHAIRPERSON PORINI: Also, perhaps for
21 clarification, we have folks who have a long history with
22 this Commission and helped write their regulations.

23 MS. HALSEY: Okay. I always assumed that the
24 advocates were attorneys.

25 CHAIRPERSON PORINI: All right. So we have a motion
26 and a second to deny the test claim.

27 May we have role call.

28 MS. HIGASHI: The motion is the substitute motion,

1 so it would be an amendment to the original motion which was
2 to continue.

3 CHAIRPERSON PORINI: Right.

4 MS. HIGASHI: So let me call the role.

5 Ms. Aronberg?

6 MS. ARONBERG: Let me get clarification. What is
7 this?

8 MS. STEINMEIER: It's to deny.

9 CHAIRPERSON PORINI: It's to deny the test claim and
10 then continue --

11 MS. HIGASHI: My understanding of the motion was
12 that you were making a substitute motion, which is an
13 amendment to the main motion, which was to continue to go
14 with the staff's recommendation, which is to deny it, which
15 is saying, in effect, that it is not a test claim. Correct?

16 CHAIRPERSON PORINI: That's correct. That's what I
17 seconded.

18 MS. HIGASHI: Ms. Aronberg?

19 MS. ARONBERG: So we're voting on whether to
20 continue it?

21 MS. HALSEY: No. This is yes or no to deny the test
22 claim.

23 MS. HIGASHI: To amend.

24 CHAIRPERSON PORINI: All right. The motion before
25 us is to deny the test claim.

26 MS. ARONBERG: Okay. Aye.

27 MS. HIGASHI: Mr. Beltrami?

28 MR. BELTRAMI: No.

1 MS. HIGASHI: Ms. Halsey?
2 MS. HALSEY: Aye.
3 MS. HIGASHI: Mr. Lazar?
4 MR. LAZAR: No.
5 MS. HIGASHI: Mr. Sherwood?
6 MR. SHERWOOD: Aye.
7 MS. HIGASHI: Ms. Steinmeier?
8 MS. STEINMEIER: No.
9 MS. HIGASHI: Ms. Porini?
10 CHAIRPERSON PORINI: Aye.
11 MS. HIGASHI: That motion carries, and that's only
12 the substitute, so do we need another motion, then, because
13 now we've amended the primary motion so we should have a
14 motion on the substitute. We should have a vote on the
15 substitute motion now.
16 CHAIRPERSON PORINI: All right.
17 MR. LAZAR: On the original motion?
18 MS. HIGASHI: Right.
19 CHAIRPERSON PORINI: So the original motion was to
20 postpone.
21 MS. HIGASHI: Let me read this. The substitute
22 motion was approved on a 4-3 vote.
23 CHAIRPERSON PORINI: So we have denied the test
24 claim.
25 MS. HIGASHI: No; therefore, the motion before you
26 is the same motion, and so, for clarity, we should probably
27 have another vote on that.
28 CHAIRPERSON PORINI: So what we are voting on now

1 will be exactly the same thing we voted on a moment ago.

2 MS. HIGASHI: Yes, voting on the staff

3 recommendation.

4 CHAIRPERSON PORINI: All right. All right.

5 May we have role call.

6 MS. HIGASHI: Mr. Beltrami?

7 MR. BELTRAMI: No.

8 MS. HIGASHI: Ms. Halsey?

9 MS. HALSEY: Aye.

10 MS. HIGASHI: Mr. Lazar?

11 MR. LAZAR: No.

12 MS. HIGASHI: Mr. Sherwood?

13 MR. SHERWOOD: Aye.

14 MS. HIGASHI: Ms. Steinmeier?

15 MS. STEINMEIER: No.

16 MS. HIGASHI: Ms. Aronberg?

17 MS. ARONBERG: Aye.

18 MS. HIGASHI: Ms. Porini?

19 CHAIRPERSON PORINI: Aye.

20 All right. So we have a -- unfortunately, we have

21 adopted the staff's recommendation twice.

22 Thank you.

23 MR. BURDICK: Thank you.

24 CHAIRPERSON PORINI: We need to take a five-minute

25 break.

26 (Whereupon a break was taken.)

27 CHAIRPERSON PORINI: All right. If the folks can

28 be seated. We're going on our next test claim.

1 MS. HIGASHI: Item 4 will be presented by staff
2 counsel, David Scribner.

3 CHAIRPERSON PORINI: Mr. Scribner.

4 MR. SCRIBNER: Good morning. "The test claim
5 legislation and regulations established a program related to
6 achievement testing that school districts must administer to
7 pupils in the state, the Standardized Testing and Reporting
8 Program, or (STAR) Program. The STAR Program requires school
9 districts, between March 15 and May 15 of each year, to test
10 all students in grades 2 through 11 with a nationally normed
11 achievement test designated by the State Board of Education.
12 School districts are also required to engage in numerous
13 activities related to test administration and reporting.

14 "Staff finds that immediately before the enactment
15 of the test claim legislation, state law did not require
16 school districts to administer achievement tests to pupils.
17 Rather, prior law set up an incentive program for school
18 districts that administer achievement tests to all pupils in
19 grades 2 through 10. Former Education Code section 60640
20 provided \$5 per pupil tested to those districts that
21 certified to the Superintendent of Public Instruction that it
22 would administer achievement tests to all pupils in grades 2
23 through 10. Staff also finds that the test claim legislation
24 did not itself include 'additional revenue that was
25 specifically intended to fund the costs of the state mandate
26 in an amount sufficient to fund the cost of the state
27 mandate.' Thus, staff finds that Government Code section
28 17556, subdivision (e), is inapplicable to this test claim.

1 "Accordingly, staff finds that the test claim
2 legislation imposed costs mandated by the state upon school
3 districts. Staff concludes that funds received by school
4 districts for the administration of the STAR Program pursuant
5 to the State Board of Education's reimbursement rate should
6 be offset against total claim amounts for this test claim.

7 "Staff recommends that the Commission approve this
8 test claim for the activities listed on pages 3 and 11 of the
9 staff analysis."

10 Please state your name for the record.

11 MR. CUNNINGHAM: Jim Cunningham, San Diego Unified
12 School District, test claimant.

13 MR. KNOTT: Rick Knott, Controller, San Diego
14 Unified School District.

15 MR. RAINES: Bob Raines, Testing Program Manager
16 for the San Diego Unified School District.

17 MS. OROPEZA: Jeannie Oropeza, Department of
18 Finance.

19 MR. ZERVINKA: Pete Zervinka, Department of
20 Finance.

21 CHAIRPERSON PORINI: All right. Would you like to
22 open, Mr. Cunningham?

23 MR. CUNNINGHAM: Please. We recommend that you
24 adopt the staff recommendation with two subsequent changes on
25 Bates page 12, the first and fourth bullet pointed
26 paragraphs. We request that you delete the two sentences
27 that read, "Cost associated with teacher time to administer
28 the tests are not reimbursable"; it's the same sentence in

1 both of these two bullet-pointed paragraphs.

2 These two sentences in the proposed document are not
3 supported by evidence; further, these sentences, if adopted,
4 would adopt the plain language of Article XIII(b) section 6
5 of the California Constitution and the intent of this
6 constitutional provision. Section 6 requires the state to
7 reimburse school districts for the costs of any new program
8 or higher level of service imposed on school districts with
9 certain exceptions not applicable here. The California
10 courts have consistently held that Section 6 is intended to
11 prevent the state from forcing a program on school districts
12 without paying for the cost of the program.

13 The staff's recommendation would do just that, it
14 would force the STAR program on school districts and would
15 not reimburse us for a substantial cost that is part of that
16 program. The state could have implemented this STAR program
17 using state employees to administer the tests. If they had
18 done so, then the state will incur this cost. There's no
19 valid reason that because they chose to use school district
20 employees to carry out their tests that they should void
21 reimbursement for those costs.

22 With me, this morning, I have Rick Knott, the
23 controller of San Diego Unified School District. Mr. Knott
24 is an expert in school finance with over 30 years of school
25 finance and auditing experience. Mr. Knott also is an
26 instructor on school finance at U.C. San Marcos, has a
27 bachelor's degree in accounting and a master's degree in
28 education and administration.

1 Mr. Knott will testify on the standard cost
2 accounting principles and practices both in the field of
3 school, finance and also in the field of general accounting.

4 Also with me today is Mr. Bob Raines, the testing
5 program manager for San Diego Unified School District.

6 Mr. Raines has a bachelor's of arts degree in mathematics
7 and a master's of arts degree in secondary administration.

8 Mr. Raines has served with the district for 21 years and has
9 managed the district's testing unit for the last six years.

10 Mr. Raines will briefly explain the administration of his
11 STAR program, the costs associated with the administration of
12 the STAR program and is available to answer any questions you
13 may have regarding the STAR Program.

14 And, with that, I'd like to turn the floor over to
15 Mr. Knott.

16 CHAIRPERSON PORINI: All right. Mr. Knott.

17 MR. KNOTT: Thank you very much. Good morning,
18 ladies and gentlemen. Just to correct the record, it's Cal
19 State University, San Marcos. I don't think they think of
20 themselves as part of the U.C. system yet.

21 For those of you who don't find cost accounting on
22 the preferred list of reading for night activities, I'd like
23 to just go through and discuss a little bit about the cost
24 accounting principals. Generally speaking, what I'm going to
25 focus on are the guidelines that we school districts in
26 public government have to focus on.

27 I would like to cite for your example, for instance,
28 the State Administrative Manual, section 6610, which is

1 published by the Department of Finance wherein they define
2 cost to be "the redirection of existing staff and/or
3 resources to an activity"; further, in that manual, they
4 indicate that "direct costs do include personnel needed to
5 perform a line function or activity as prescribed."

6 Continuing on in the same manual published by the
7 Department of Finance, in section 9200 through 9240, they
8 speak of cost accounting principles as "those that require
9 that any cost which can be identified directly to a program
10 be charged to that program." In this particular case, the
11 teachers are involved in the program that we have here before
12 you, the STAR testing.

13 "Typical cost accounting procedure for allocation of
14 salaries and wages is to charge a program with a number of
15 hours taken up by that particular program," and that is, in
16 fact, what we seek to do, the time spent by district
17 employees and the activities is what we seek to claim.

18 Continuing in section 8752.1 of the Department of
19 Finance under the state policy for the recovery of full costs
20 by state agencies, it is described "that personnel service
21 costs incurred and meeting the cost objective are part of the
22 direct cost to be recovered by state departments." So their
23 own guidelines call upon the state agencies to charge labor
24 cost directly.

25 Under the State Accounting Manual, which is
26 published by the California Department of Education, which
27 all the public school districts in California must comply
28 with, in section 702, direct costs are described to be "Those

1 that are charged to the benefitted program," and an example
2 is given, "Example of cost easily identified with a
3 particular program are teachers' salaries," in the State
4 Accounting Manual.

5 Finally, turning to the federal sector, the Office
6 of Management and Budget publishes numerous circulars, and,
7 in Circular A-21, which deals with cost principles for
8 educational institutions, and, in A-87, cost principles for
9 state, local and gaming and Indian tribe governments, direct
10 labor costs are defined to be "Those costs that are
11 identified with a particular activity including compensation
12 of the employees for the time devoted to the activity."

13 So, by the state's own directions that we have in
14 their manuals, the time spent by teachers in performing this
15 activity are allowable costs for that particular activity.

16 Thank you.

17 MR. CUNNINGHAM: Thank you. I'll turn it over to
18 Mr. Raines to give a brief description of the STAR program.

19 CHAIRPERSON PORINI: Mr. Raines.

20 MR. RAINES: Good morning, ladies and gentlemen.
21 The STAR Program is the most extensive statewide testing
22 program in the history of California. In our district, it
23 involves ten grade levels and approximately a hundred
24 thousand students.

25 The extensive and detailed requirements related to
26 administration, reporting and processing and the newly
27 imposed penalties for incomplete or incorrect demographic
28 reporting have contributed greatly to the complexity of this

1 program.

2 The coordination involves several areas: One is
3 staff development of site testing coordinators and teachers
4 in the areas of appropriate test preparation guidelines,
5 security procedures and administration, consultation with
6 school personnel on ongoing basis relative to appropriate and
7 inappropriate test preparation materials and activities,
8 ensuring proper test security procedures are observed at
9 schools relative to storage and distribution of test
10 materials, the collection and redeployment of the answer
11 documents for the augmented content tests, appropriate
12 administration of practice tests and sample items and
13 appropriate handling of student answer documents.

14 Another area is ensuring that proper test
15 administration procedures are followed at schools in
16 accordance with California Department of Education and
17 Publisher Guidelines, ensuring that demographic information,
18 which now represents 17 distinct fields on every answer
19 document, is properly coded on answer documents, that means
20 the necessity to pre-code answer documents for most students,
21 handcoding answer documents for students new to the district
22 or the school since, approximately, January of the school
23 year, and for demographic fields that may not be carried on
24 the district database, and, of course, processing answer
25 documents for quality control.

26 A final area involves investigation of testing
27 irregularities followed by the California Department of
28 Education and subsequent special coding of the answer

1 documents in those cases.

2 Thank you.

3 MR. CUNNINGHAM: Thank you.

4 CHAIRPERSON PORINI: All right. Mr. Cunningham,
5 have you completed?

6 MR. CUNNINGHAM: Yeah. Again, our recommendation
7 would be to adopt the staff recommendation excluding the two
8 sentences at the end of those two bullet pointed paragraphs.

9 CHAIRPERSON PORINI: All right. Department of
10 Finance, Ms. Oropeza?

11 MS. OROPEZA: If I could respond to the first
12 comment that was made by the claimants, in terms of -- while
13 we would agree that you can point to or determine which costs
14 that teachers and administrators are using to directly
15 administer the program, the statute that authorized the
16 program allows districts to administer the tests during a
17 regular day of instruction.

18 So, to the extent that the claimants are alleging
19 that this is not being paid, then they would have to be
20 offset by the money that we're paying them for a regular day
21 of instruction, which they can't be doing both activities at
22 the same time. Therefore, we believe that while they can
23 directly claim for the administration of the program then
24 they would have to offset the costs by not complying with
25 providing the regular minutes of instruction.

26 However, we contend that because the statute
27 authorizes that they do provide or administer the tests
28 during the regular school year, we are, in essence, paying

1 what we paid for, like we do for regular minutes of
2 instruction, therefore, we find that it's not reimbursable
3 since we're already paying for it.

4 The other thing that we'd like to point out is that
5 in many cases districts complain that the state develops or
6 establishes new programs and then doesn't pay for them. In
7 this case, we believe that the legislature and the
8 administration did the right thing by setting aside monies
9 specifically to administer the STAR Program, and we believe
10 that once you take out the fact that administering the
11 program is not reimbursable, we provided more than sufficient
12 funds to cover the costs of the district.

13 If you look at their Exhibit H, which outlines the
14 cost, if you backed out the cost of the teachers and the
15 administrators, it is very evident that we are providing more
16 than sufficient funds to cover all the costs that are being
17 claimed that we believe are reimbursable; therefore, we think
18 that the staff analysis incorrectly says that we need to
19 provide more money in the legislation, because the costs --
20 or the funding that we provided isn't sufficient, and,
21 therefore, we don't think this is a reimbursable mandate for
22 that reason.

23 The staff analysis is claiming that this statute did
24 not provide additional funding, which we don't believe is
25 necessary, since we believe we funded the costs up front
26 through the Budget Act for this program.

27 MR. CUNNINGHAM: Can we respond?

28 CHAIRPERSON PORINI: Well, let's see.

1 Mr. Zervinka, did you want to --

2 MR. ZERVINKA: No.

3 CHAIRPERSON PORINI: All right. Mr. Cunningham.

4 MR. CUNNINGHAM: All right. Well, the staff has
5 done the proper analysis. Again, they've looked at the
6 section that addresses -- in your statutes that addresses
7 offsets, and it requires the Department of Finance to prove
8 three things: One is that the statute or executive order
9 that imposed the mandate included the additional revenue;
10 second, that the additional revenue was specifically intended
11 to fund the costs of the mandate; and, third, that the
12 additional revenue was sufficient to cover the entire cost of
13 the mandate.

14 Now, if the Department of Finance cannot prove any
15 one of those three things, their argument must fail. In
16 fact, they cannot prove even one of those three. Section --
17 or Chapter 828 of the Statutes of 1997 is the statute that
18 imposed this mandate. There is no appropriations of funds in
19 Chapter 828. This, alone, would defeat their argument.

20 In our test claim, we've acknowledged that in the
21 Budget Act the state did appropriate 6 -- up to \$8 per test,
22 however, those funds are not sufficient and they are not in
23 the bill that adopted the mandate. We have always taken the
24 position that whatever funds we receive through that budget
25 bill, though, the \$6, now our district is limited to \$2,
26 would be a proper offset against the claim but it does not
27 defeat the test claim.

28 Secondly, nowhere has the Department of Finance

1 provided any evidence to show that there was money
2 specifically intended in the budget bill for this particular
3 mandate other than the \$6. They've not provided any evidence
4 that the teachers' time is paid for there. And, with respect
5 to our exhibit, that's something that we did at the beginning
6 of this program before we knew what the costs are. We think
7 our costs are significantly more than that. Even if you were
8 to discount the teachers' time in administering the tests,
9 you would still have costs in excess of the claim.

10 Again, that's a factual matter that I don't believe
11 the Department of Finance is qualified to testify on this
12 matter. We have been collecting cost data over the last
13 three years. I don't know that they have.

14 And, finally, I'd like to turn over the floor to
15 Mr. Knott to address the revenue issue.

16 CHAIRPERSON PORINI: Mr. Knott.

17 MR. KNOTT: The Department of Finance cited the
18 funding that school districts receive which we call our
19 Revenue Limit Funding. So now we're paying for the
20 attendance of our students. Since the enactment of the STAR
21 law, that revenue limit has been adjusted for only three
22 items: a cost of living adjustment, which is tied to the
23 Department of Commerce price deflator, and that goes to all
24 school districts just to maintain for the cost of inflation,
25 not new activities but just inflation; we've been funded for
26 the growth in our student population, our ADA; and the third
27 item is beginning in 2000-2001, if school districts
28 participated in the beginning teachers' salary adjustment

1 last year, we are able to add to our revenue limit a dollar
2 amount if you participated in that program. Those have been
3 the only three adjustments that have occurred to school
4 districts' revenue limits.

5 I'd also like to point out that while school
6 districts are mandated to offer school for 180 days, our
7 funding is tied to our P2 ADA. Our P2 ADA from my district
8 cut off on March 23rd, this year. It cut off prior to the
9 administering of the tests. So the argument that we would
10 have lost funding if the students weren't in instruction is
11 really null and void, because our funding was tied to our ADA
12 generated up to our P2 point in time, and the test occurs
13 after that time. We are not penalized for absences after
14 that point in time.

15 CHAIRPERSON PORINI: All right. Ms. Oropeza.

16 MS. OROPEZA: It's not clear to me exactly what
17 evidence the claimants are expecting us to provide. It seems
18 to us that -- and it's also not clear to me why it's
19 necessary that the legislation -- the legislation has to
20 provide, from what I can tell here, additional revenue
21 sufficient to cover costs for the mandate.

22 If we provided money in the Budget Act, it covers
23 those activities, then, by virtue of that, we don't have to
24 provide additional funds if we're also covering the costs of
25 the district. And there are very -- in the regulations that
26 the Department of Education has adopted, there are very clear
27 outlines of what the districts are being reimbursed for, so
28 I'm not quite sure what it is that the claimants are

1 expecting us to provide, in terms of evidence, beyond what's
2 already out there.

3 And one last thing: Districts were provided 1.8
4 billion dollars in deficit reduction money as an additional
5 adjustment that could be used for any discretionary purpose.
6 And, as I understand it, it mostly went to teachers'
7 salaries.

8 MR. KNOTT: The deficit reduction that the
9 Department speaks to is paying us on their cost of living
10 adjustments for 1990 through 1995. It's just a grant that's
11 for revenue limits, but failed to appropriate funding for.
12 So it just means that we're going to be paid a hundred cents
13 on the dollar beginning in 2000 and 2000 and 1.

14 Throughout the decade of the 1990's, school
15 districts were paid anywhere from 89 cents to 93 cents on the
16 dollar of what they were entitled to under the state law. So
17 that was not new funding for new programs. It's simply
18 financed on cost-of-living adjustments that predate the
19 mandate.

20 CHAIRPERSON PORINI: All right. Questions from
21 members?

22 MR. BELTRAMI: Madam Chair, I'd like to ask staff:
23 Do you have a comment on this salary issue?

24 MR. SCRIBNER: The salary issue? Well, the original
25 point, going back a little bit, as far as the claimant
26 bringing up the cost accounting issues that teachers' time to
27 be accounted for, the staff does not disagree. However,
28 17514 is in direct conflict with that and is what the

1 Commission is governed by. 17514 defines costs mandated by
2 the state.

3 Costs mandated by the state means any increased
4 costs which a school district is required to incur "increased
5 costs"; the school day is not extended, the school year is
6 not extended. Teachers are doing something different. They
7 are doing the STAR Program as opposed to teaching math or
8 history or whatever. It's a different activity, in the same
9 amount of time, that has not resulted in increased cost, and
10 that was our position, and that is why the change was made
11 from the draft.

12 CHAIRPERSON PORINI: Mr. Cunningham?

13 MR. CUNNINGHAM: Yeah. We don't agree with that.
14 What has happened is that you have replaced a state chosen
15 activity or you've used a state activity to replace a
16 district activity, and that does have a cost. We may have to
17 extend other services or things that we normally would have
18 had the teachers do. We no longer have the opportunity to
19 have the teachers do the activities that we, as the local
20 government, would chose to have them do. We're now carrying
21 out a state program.

22 And it's just like if the state had carried out a
23 program itself and had not passed to us -- so all the
24 Department of Finance staff has to administer the tests. You
25 know, there is a cost associated with that because you're
26 replacing some other activity that you would otherwise have
27 done with a state activity.

28 Again, I'd like to turn it over to Mr. Knott for

1 just a moment.

2 CHAIRPERSON PORINI: Mr. Knott?

3 MR. KNOTT: I think there's been an acknowledgment
4 by the state, and especially the administration here, trying
5 to seek ways to increase the instructional time,
6 acknowledging that our students aren't receiving all the
7 instructional time. My district has embarked upon this year
8 major, major programs of after-school tutoring, reading
9 programs, enlarging our summer school program beyond the
10 levels funded by the state, trying to just address the fact
11 that within our existing instructional time we're not getting
12 the job done, and I think there's general recognition.

13 So that any time there's a state imposed mandate,
14 which takes time away from the instructional function, and
15 yet we want to hold our students and have them achieve at
16 very high standards, then we're forced to find ways to give
17 them back that instructional time. And you're seeing that
18 throughout the State of California, and this administration
19 has recognized that within the last two years and is taking
20 efforts to try to address that very issue.

21 In this particular case, the legislature imposed a
22 mandate which took away time from our students and we're
23 trying to make that time up, so there is an increased cost
24 going to the district.

25 And, as Mr. Cunningham indicated, the redirection of
26 effort is a legitimate cost chargeable to any program. Those
27 who mandate the change must be prepared to pay for the
28 change, and that's what the state has basically set up in the

1 mandated cost process, and the legislature acknowledges that.
2 They tell us to come to you.
3 We accomplished -- we carried out the mandates, but,
4 as you're very well aware, you're unable to act within the
5 first year we carry out the mandates, so, obviously,
6 districts are carrying out mandates without the benefit of
7 being increased funded, hence we come to the Commission,
8 ultimately to the legislature and the governor, for the
9 reinstatement of those dollars that we've lost during that
10 time that we've had to come forward to comply with the
11 mandate and then to get our hearing before you and the
12 legislature.

13 CHAIRPERSON PORINI: Questions from members?

14 Ms. Steinmeier?

15 MS. STEINMEIER: I have a lot of sympathy for this
16 issue; however, even though cases -- excuse me, decisions
17 made by the Commission are not -- do not set precedent. We
18 have looked at this very issue several other times since I've
19 been on the Commission in the last three years, and we have
20 not been able to find a way, under our existing code
21 sections, to be able to give you this redirected time. I
22 wish there were a way to do it. I'd suspect you'd have to go
23 to other sources to get that, either the legislature or the
24 courts.

25 There have been no court rulings or legislation that
26 says that redirected costs are reimbursable. So, at this
27 point, although I'd like to make that change, I'm afraid I'm
28 going to have to go with the staff analysis, and then -- and

1 it has given you a lot of activities which are additional
2 costs that we can actually quantify and reimburse the school
3 districts for, so I am going to be supportive of the staff
4 analysis.

5 And, if it's appropriate, I'd like to move it.

6 CHAIRPERSON PORINI: All right. We have a motion.

7 MR. SHERWOOD: I would like to second the motion.

8 And I'd also like to say that I agree with
9 Ms. Steinmeier, since I've been on the board a few years
10 myself, and this issue is one that we've addressed before,
11 and it's not pleasant, but I think we're in the
12 position we're in and that we have to vote from where we are.

13 MR. CUNNINGHAM: We're just giving you another
14 opportunity to get it right.

15 CHAIRPERSON PORINI: Thank you, Mr. Cunningham.

16 All right. We have a motion and a second.

17 Mr. Beltrami?

18 MR. BELTRAMI: Mr. Cunningham, why don't you just go
19 out and hire people to do this?

20 MR. CUNNINGHAM: That may be the result.

21 MR. BELTRAMI: I'm sure that it's --

22 MR. CUNNINGHAM: We may need to just have staff
23 probably on those days.

24 MR. BELTRAMI: They keep just sending you things to
25 do and, you know, same amount of folks to do it. Something
26 has got to break at some point in time.

27 MR. KNOTT: One of the things we attempt to do was
28 to carry out the state direction of mandates in the most cost

1 efficient way that we possibly can but also recognize who is
2 the best person to do it. And, believe me, when you're
3 administering tests, probably the best person to administer
4 the test to the kids in the classroom is that child's teacher
5 who is familiar with that class population as opposed to
6 bringing in an outsider who may not know which children may
7 need a little more attention during the test process.

8 CHAIRPERSON PORINI: Just as a side note, I would
9 say that your suggestion that the Department of Finance might
10 administer the test, maybe we'll pursue that.

11 MR. KNOTT: When is staff available and how many?
12 Mark it on your calendar, March 15 to May 15.

13 CHAIRPERSON PORINI: We'll work that out.

14 Mr. Beltrami?

15 MR. BELTRAMI: How much time does the test take?

16 MR. CUNNINGHAM: I think Bob can address that better
17 than I.

18 MR. RAINES: About eight hours, right now, of actual
19 testing time, and that doesn't include reading the directions
20 and so forth. With the proposed addition of two more content
21 standards test in history/social science and science this
22 next year, it's going to be something over ten hours.

23 CHAIRPERSON PORINI: All right. We have a motion
24 and a second before us to adopt staff's recommendation.

25 Mr. Lazar?

26 MR. LAZAR: No.

27 CHAIRPERSON PORINI: All right. Any further
28 discussion?

1 (No Response.)

2 CHAIRPERSON PORINI: Seeing none, may we have role

3 call.

4 MS. HIGASHI: Mr. Lazar?

5 MR. LAZAR: Aye.

6 MS. HIGASHI: Mr. Sherwood?

7 MR. SHERWOOD: Aye.

8 MS. HIGASHI: Ms. Steinmeier?

9 MS. STEINMEIER: Aye.

10 MS. HIGASHI: Ms. Aronberg?

11 MR. ARONBERG: Aye.

12 MS. HIGASHI: Mr. Beltrami?

13 MR. BELTRAMI: Very reluctantly, aye.

14 MS. HIGASHI: Ms. Halsey?

15 MS. HALSEY: Aye.

16 MS. HIGASHI: Ms. Porini?

17 CHAIRPERSON PORINI: Aye.

18 MS. HIGASHI: Thank you.

19 MR. CUNNINGHAM: Thank you.

20 CHAIRPERSON PORINI: Thank you.

21 That takes us to Item 6.

22 MS. HIGASHI: This item will be presented by

23 Nancy Patton.

24 MS. PATTON: Good morning. "Existing law requires

25 the Commission to hear and decide claims by local agencies

26 and school districts that the State Controller incorrectly

27 reduced their reimbursement claims.

28 "The Commission's regulations allow the Commission

1 to combine analyses of incorrect reduction claims from
2 different entities if the claims contain similar issues.
3 Accordingly, staff is providing one analysis for the IRCs for
4 four different claimants: Grossmont Union High School
5 District, Panama-Buena Vista Union School District, Carlsbad
6 Unified School District, and San Diego County Office of
7 Education.

8 "This incorrect reduction claim involves the School
9 Crimes Statistics Reporting and Validation Program. In 1984,
10 legislation was enacted that required school districts to
11 collect data regarding crimes committed on school grounds,
12 and to report this data to the California Department of
13 Education. The Department developed a 'Standard School
14 Crimes Reporting Form' for school districts to report this
15 data. In 1991, this Commission determined that the program
16 and the Department of Education's reporting form constituted
17 a reimbursable state mandated program. The Commission
18 adopted parameters and guidelines for this mandate, and the
19 State Controller's Office issued claiming instructions. The
20 Controller's Office reduced the claims filed by the claimants
21 disallowing costs for training.

22 "The claimants contend that their reimbursement
23 claims were incorrectly reduced. The claimants argue that
24 the Controller did not cite any statutory basis for its
25 reduction of the claims, and that the test claim legislation
26 provides no authority for the Controller to reduce the
27 claims. The claimants contend that training costs are an
28 implicit activity of any new mandate program. The claimants

1 argue that the State Controller has reimbursed training costs
2 in other mandate programs where training was not specifically
3 included in the P's and G's. Finally, the claimants state
4 that the Controller established a standard of general
5 application without the benefit of law or due process of
6 rulemaking.

7 "Staff finds that the State Controller's Office did
8 not incorrectly reduce these claims for the following
9 reasons:

10 "Case law and statute provide the Controller with
11 the authority to audit claims for legality and correctness,
12 and to adjust the claims for reimbursement if they are
13 excessive or unreasonable. Therefore, the Controller may
14 reduce the claims, despite the fact that the implementing
15 test claim legislation did not provide the Controller with
16 explicit authority to reduce the claims.

17 "Not all mandates require training. The Commission
18 has adopted several parameters and guidelines that do not
19 include costs for training because training was not
20 determined to be a reimbursable activity. Therefore,
21 training is not an implicit activity of every new mandate.

22 "If training is needed to carry out the mandate, it
23 should have been addressed when developing the parameters and
24 guidelines. The parameters and guidelines for this program
25 contain no reference to training as a reimbursable activity."

26 Finally, "The Commission does not have the authority
27 to determine whether the Controller created a standard of
28 general application without benefit of law or due process of

1 rulemaking. This determination falls under the authority of
2 the Office of Administrative Law.

3 "Accordingly, staff recommends that the Commission
4 deny these IRCs."

5 Will the witnesses please state their names for the
6 record.

7 MR. PETERSEN: Keith Petersen representing the four
8 named claimants.

9 MR. CUNNINGHAM: Jim Cunningham, of the San Diego
10 Unified School District, interested party.

11 MR. YEE: Jeff Yee, State Controller's Office.

12 MR. VORHIES: And Paige Vorhies, State Controller's
13 Office.

14 CHAIRPERSON PORINI: All right. Mr. Petersen, do
15 you want to begin?

16 MR. PETERSEN: Certainly. Thank you. I think we've
17 got another mind bender today. I know you've had a couple of
18 good ones here already. The situation here is the school
19 crimes test claim that was adopted about nine years ago. The
20 test claim specifically adopted the State Department of
21 Education's guidelines on the school crimes data collection
22 program.

23 Those guidelines specifically directed districts to
24 appoint a district training officer to attend state
25 Department of Education training, and, further, for that
26 district training officer to train district staff in
27 implementing the school crimes data collection program. So
28 the test claim adopting that documentation specifically

1 anticipated training costs.

2 Staff makes a valid point that the parameters and
3 guidelines do not include the words "training costs." What
4 I've tried to do with my documents submitted is point out to
5 you that this is a different time than the Commission nine
6 years ago. Nine years ago training costs were not an issue.
7 They were not a stated activity.

8 If you take a look at the chart I provided, both
9 with my rebuttal and with the July 19th filing, we went
10 through every parameters and guidelines adopted since 1979
11 when this all started and indicated where the training costs
12 were enumerated in the parameters and guidelines. The first
13 column is the column that indicates where parameters and
14 guidelines allow -- specifically state that training costs
15 are reimbursable. You'll see that that did not occur until
16 1998. Now, I'll get back to that in a moment.

17 The second column indicates there are four
18 parameters and guidelines in the early years that
19 specifically mentioned training activities, and, towards the
20 bottom, there's one set of parameters and guidelines that
21 mention it as an activity, and Mr. Cunningham will testify to
22 that reason in a moment.

23 Those four instances, when training was enumerated,
24 pertain usually to introduction of new curriculum material
25 and training teachers on how to implement the curriculum
26 material. It does not pertain to general staff training.
27 The last column indicates where the parameters and guidelines
28 have been silent as to training, which is the vast majority

1 until 1998. The practice, going back to at least 1989, which
2 is when I started in this business, was that training costs
3 were not an issue. They were not an enumerated activity.

4 The recent parameters and guidelines include
5 training activities because of something that occurred in
6 1998. And I'll give you a side bar with Mr. Cunningham on
7 that.

8 CHAIRPERSON PORINI: Mr. Cunningham?

9 MR. CUNNINGHAM: Thank you. I've been involved with
10 the mandates for a number of years, the last four with the
11 school districts. And, shortly after I began with the
12 San Diego Unified School District, there appeared to be -- I
13 think in some discussions on the proposed adoption of uniform
14 or boilerplate parameters and guidelines, there was an issue
15 raised with respect as to whether training costs were or were
16 not a separate activity that needed to be identified, and,
17 because that issue was being raised, I decided that in all of
18 the parameters and guidelines that we brought forward from
19 that point forward, we would identify it as a separate
20 activity, just to eliminate any argument. It does not mean
21 that the training was not part or an implicit part of any of
22 the other activities.

23 In fact, what we had believed to be the case, and
24 what I still believe to be the case, is that every activity
25 that is listed requires, among other things, training on how
26 to do that activity. When you first started on the
27 Commission, you didn't naturally just come to an
28 understanding of how to carry out this job; you had to go

1 through some training. That's true with every mandate.

2 And I would take issue, mainly, with the staff's
3 recommendation where it says that not all mandate programs
4 require training. I believe that all mandate programs
5 absolutely require training. I do agree with them that the
6 normal parameters and guidelines have specifically listed
7 training as a separate activity. And, again, that -- if the
8 recent practice is being used to say that because we are now
9 putting it in as an activity it is a bar to claiming that
10 activity on other parameters and guidelines, then I'm sorry I
11 added it in. I would rather --

12 MR. PETERSEN: Thank you. Thanks for helping.

13 MR. CUNNINGHAM: I'd rather just continue with the
14 position that all mandated activities require training. And
15 it's a -- whether it's a new staff member or whether you have
16 to remind existing staff members how to carry out a job -- I
17 mean, when a mandate is imposed, particularly this one, it's
18 a very complex mandate, and people have to understand how to
19 carry out their jobs, and training is a part of the main
20 activity, whether it's the data collection activity or
21 whether it's completing the reports for the state, you have
22 to be trained how to do that, and people that are involved in
23 the process have to be -- to get continuing training on this
24 one.

25 I'd also like to reinforce the point that
26 Mr. Petersen made that, in this test claim, one of the things
27 that the Commission found was that the guidelines imposed for
28 this mandate were part of the mandate, and those guidelines

1 very clearly require training, and so the fact that they are
2 not in the parameters and guidelines, in this instance,
3 shouldn't be a bar; however, I think you need to recognize
4 that training is a required activity or required portion of
5 every mandated activity.

6 Thank you.

7 CHAIRPERSON PORINI: All right. Mr. Vorhies?

8 MR. PETERSEN: I had more.

9 CHAIRPERSON PORINI: Oh.

10 MR. VORHIES: Oh.

11 MR. PETERSEN: Thank you. That was just a side bar,
12 a rather long one. I have to agree with Mr. Cunningham, the
13 fact that the test claim has those words in it that state
14 that -- that set up this training program is enough to make
15 it reimbursable.

16 The history of the parameters and guidelines
17 indicate that it's generally been silent. And I have to say,
18 of the first 39 listed there that were silent, with the
19 exception of those four, I either wrote the test claim or the
20 parameters and guidelines for over 30 of them, so I believe
21 it's a reasonable expectation, of having written the test
22 claim and the parameters and guidelines, that I'm familiar
23 with what occurred at those hearings, and that's that
24 training wasn't an issue.

25 A couple of shorter points, and then you can move
26 on. If you think that the training -- the claimant -- the
27 parameters and guidelines should mention training explicitly,
28 I'd indicate that that's a new policy, and to apply it to

1 this test claim would be something you've been doing ex post
2 facto and, therefore, would not be appropriate, because the
3 circumstances were different at the time.

4 And I did want to just stop briefly on two points:
5 I don't want anybody to have the impression that any test
6 claimant or any claimant thinks that the State Controller
7 has -- does not have the power to audit. There's a statute,
8 17561, that says they have the power to audit, and I agree
9 that they have the power to audit. Two points I was making
10 is that there is no statute that says that training costs are
11 not reimbursable, that was a point that was lost, I think, in
12 the staff recommendation.

13 The second point is -- it's a factual question of
14 whether or not it occurred. To simply reiterate that the
15 Controller has the power to audit is not to say that an audit
16 occurred. You'd have to examine what the Controller did to
17 decide whether an audit occurred.

18 And my last point is on June -- excuse me, July
19 19th, I sent you a letter listing 22 items that the staff
20 recommendation did not cover. Whether staff agrees with
21 those or not, I think it's appropriate that they be included
22 in the staff recommendation and tell me where these facts are
23 not relevant. Some of the facts and allegations are rather
24 mundane.

25 The first one said, "The substance of incorrect
26 reduction claim is a matter of first impression." Well,
27 that's rather basic except it's a required element of an
28 incorrect reduction claim. I had to put that in there. The

1 staff did not address that issue, and, indeed, there's 21
2 other statements of fact that they did not present to you in
3 the staff recommendation that are quite relevant. And, if
4 they're not relevant, I think we should be told why not.

5 CHAIRPERSON PORINI: All right. Mr. Vorhies?

6 MR. VORHIES: Just a quick comment. We perform what
7 is called a claim audit, and a claim audit has a very narrow
8 perspective. We look at the eligibility of cost claims that
9 we can pick up in the statutes and in the P's and G's that
10 are explicitly stated. If we don't see them, we can't assume
11 that that's an eligible cost. We have to be able to look and
12 say that, yes, here it is. This is a defined cost. We can
13 pay this. Otherwise, there is no permission or no authority
14 to make the payment unless we have something that we can
15 relate to, specifically.

16 Secondly, you know, in this audit, we look at: Are
17 the costs reasonable or excessive? And the third thing we
18 look at, if we need to, is: Are there -- is there actual
19 proof of expenditure? So the scope of the audit is narrow.
20 And, as to the issue here, we truly have concluded, though,
21 that this is a decision that the Commission has to make.

22 CHAIRPERSON PORINI: All right. Mr. Yee, did you
23 wish to comment?

24 MR. YEE: No.

25 CHAIRPERSON PORINI: Ms. Patton, did you want to
26 comment on the letter of July 19th?

27 MR. PATTON: Uh, yes. We did look at the letter;
28 we did review it. We revised our staff analysis to indicate

1 that the claimants had reiterated their original arguments.
2 The claimants and interested parties listed many arguments to
3 show that they should receive costs for training under this
4 test claim. Some of them are good arguments. We're not
5 necessarily disagreeing with that but that is not the issue
6 before the Commission.

7 The issue before the Commission is: Did the State
8 Controller incorrectly reduce the claim? And the Controller
9 must look at the statutes, the parameters and guidelines, and
10 their claiming instructions when they're performing their
11 review. None of those items contained training, not the
12 statute, not the P's and G's, not the claiming instructions,
13 and, therefore, we found that they did not incorrectly reduce
14 the claim.

15 CHAIRPERSON PORINI: All right. Mr. Petersen?

16 MR. PETERSEN: I think there's some confusion
17 between the rebuttal of June 27th and the July 19th letter.
18 The rebuttal of June 27th was before the final staff
19 analysis. There hasn't been any -- to my understanding,
20 there hasn't been any changes to the staff analysis since my
21 July 19th listing; is that correct?

22 MS. PATTON: That's correct.

23 MR. PETERSEN: Okay. I think it's clear that the
24 State Controller, in this instance, did not find the costs to
25 be unreasonable or necessary or excessive; it just found them
26 to be not reimbursable; is that correct?

27 MR. VORHIES: Correct.

28 MR. PETERSEN: So the costs were not addressed in

1 the issue, whether the costs are too big or too small. In
2 fact, they're less than a thousand dollars, you know, on most
3 of the claims. The State Controller says they have to look
4 to the statutes as well as the parameters and guidelines to
5 look for support for reimbursement. I think it's undisputed
6 that the statutes do not say training is not reimbursable.

7 However, when you look to the statutes, you also
8 have to look to the executive order adopted by the
9 Commission, which is the State Department's directions
10 regarding the School Crimes Data Collection Program. That is
11 within this jurisdiction of the Commission to adopt, as a
12 source of a mandate reimbursement. It stands right up there
13 with the statute, and the State Controller says you're
14 supposed to look at statutes.

15 Well, here was an executive order adopted by the
16 Commission saying there shall be training. So, for the State
17 Controller to say they couldn't find support in training, I
18 think, is rather disingenuous. One more step forward and
19 they would have found that the test claim includes the
20 training required by the adopted State Department of
21 Education Guidelines for the School Crimes Program, so it was
22 there, and, if they're in the business of looking elsewhere
23 besides the parameters and guidelines, it was there to be
24 found.

25 CHAIRPERSON PORINI: All right. Questions from
26 members?

27 MR. SHERWOOD: One question.

28 CHAIRPERSON PORINI: Mr. Sherwood?

1 MR. SHERWOOD: How would the Controller address that
2 last question, Paige, if you could, about looking further?

3 MR. VORHIES: You know, we do make several attempts
4 to go back and -- the unfortunate part of this is we aren't
5 very involved in the test claims. The test claims are
6 really -- the involvement is between the claimant and the
7 Commission. Where we really get involved is with the
8 parameters and guidelines, on occasion, and very few
9 occasions we will go back to the test claim. That's an awful
10 lot of research for a claim audit.

11 Now, I would say that if there were a field audit,
12 they may have gone out and looked at that, I don't know, but,
13 for a desk review, for a claim review, we're looking at the
14 items that stand right before us. In other words, these
15 are the issues that are clear under the parameters and
16 guidelines; these are the issues that are clear in the
17 legislation, or the statute, and we make our decision based
18 on that.

19 MR. SHERWOOD: Does the additional information that
20 Keith brought forward would that, possibly, affect your
21 thinking on this?

22 MR. VORHIES: I don't know. I'd have to look at
23 that.

24 MR. SHERWOOD: You'd have to look at that?

25 MR. VORHIES: Yeah.

26 MR. SHERWOOD: So that's an issue, possibly.

27 The other question I have is: When I look at the
28 chart that Mr. Petersen put together, if we go back to '79

1 and go through '98, 08/20 of '98, we have quite a few claims
2 here where training was not mentioned. I'm assuming that you
3 were paid for training?

4 MR. PETERSEN: If it was claimed, we were probably
5 paid, yes. I couldn't say for every other client or claim
6 or --

7 MR. SHERWOOD: And this may be a difficult question
8 for you, Paige, to answer, because, up through '98, then, if
9 that was so, it seems like we would have policy change at the
10 Controller's Office, possibly, that training did not need to
11 be mentioned in the P's and G's up through '98.

12 MR. VORHIES: If some claims were paid, they were
13 not paid intentionally for training. You have to recognize
14 we have 60,000 claims that come in there. We have staff of
15 about 14 people who look at 60,000 claims. If some slip
16 through, we'd be more than happy to go back and collect that
17 money.

18 MR. PETERSEN: The problem is it would not
19 necessarily be identified as training because training is not
20 an activity. It's an implementation cost. It would have
21 been somebody's name, their job title, "X" hours, and it
22 would say planning, preparation or attend training. It would
23 not have been under a heading called "training," that's a
24 recent thing that occurred. And the second thing is, as far
25 as a policy shift, the education community has made three
26 attempts to resolve this and other chronic problems with cost
27 reimbursement guidelines and such.

28 In 1990, we drafted some proposed regulations which

1 the Commission refused to hear and then a couple years later
2 we proposed a joint collaborative project to create
3 parameters and guidelines, boilerplates, and the State
4 Controller was collaborating on that process and that project
5 died under the press of other activities of the Commission.

6 And, most recently, in 1998, coincidentally the same
7 year that we started putting training into the parameters
8 and guidelines, Ms. Higashi revived that project and had
9 several meetings on this, and, once again, the project did
10 not move forward for whatever reason.

11 So it was at that time we learned the position of
12 the State Controller, that training should be enumerated.

13 And I've not written P's and G's since then.

14 Mr. Cunningham -- actually, there were several of those test
15 claims left over from when I was there before him, that he's
16 written parameters and guidelines on, and he started
17 incorporating and enumerating training costs to meet that
18 perceived need.

19 So we were responding to what we perceived as a
20 change or as something the Controller needed. Okay. And
21 it's quite clear to us that that wasn't the way it was before
22 then. So we don't believe it's appropriate to apply, ex post
23 facto, a new standard today, especially since training was
24 listed in the test claim.

25 MR. SHERWOOD: Yeah. I see -- because, if we go
26 back to '91, when the claim was mentioned they started, and
27 the assumption, evidently, on your part was that training was
28 being paid without being stated where the Controller's

1 Office, quite frankly, didn't feel it was paying training,
2 possibly.

3 MR. VORHIES: Correct.

4 MR. SHERWOOD: So I just wanted to get to the issue.

5 MR. PETERSEN: Yeah. I just don't feel it's
6 possible to assume there was training in 30 mandates. There
7 was training, you know, staff training.

8 MR. SHERWOOD: Thank you.

9 CHAIRPERSON PORINI: Mr. Beltrami?

10 MR. BELTRAMI: Certainly, Madam Chair.

11 Mr. Vorhies, I can hardly think of any government
12 budget that doesn't include training as a sub adjunct line.
13 From an audit perspective, don't you think that it's just an
14 inherent aspect of new regulations, new rules, new
15 requirements or do people just pick it up by osmosis?

16 MR. VORHIES: Well, it would be nice if I could make
17 that call, but, really, I think that's the Commission's call.
18 Our call, in the audit, is to say: Do we see it? You know,
19 is it in writing someplace? Do we see it? How can we pay
20 it?

21 MR. BELTRAMI: But the comments here were, perhaps,
22 there has been a policy in the past, so it was not identified
23 as such?

24 MR. VORHIES: Yeah. It hasn't been a payment policy
25 in the past to make those payments on it. Again, we've
26 always stuck with the claim audit procedure. If the eligible
27 item is listed, they will pay it.

28 CHAIRPERSON PORINI: Are there any questions or

1 comments from members?

2 Ms. Steinmeier?

3 MS. STEINMEIER: Mr. Cunningham, it wasn't a
4 mistake to make it -- to put it in the parameters and
5 guidelines. I know it doesn't cause a problem retroactively,
6 but, going forward -- consistency is what this Commission is
7 driving for. I believe that's what the Controller's Office
8 wants. We all want to be consistent. This one is difficult
9 because it appears that we are being inconsistent only
10 because the P's and G's are silent on that issue.

11 What's -- this is for staff: What options do the
12 claimants have if they can show that it flows from the
13 statute? It's in the document that Mr. Petersen identified,
14 so the training is assumed, at least from the statute.

15 Should the P's and G's have been amended? What are
16 the other options?

17 CHAIRPERSON PORINI: Pat?

18 MS. HART JORGENSEN: There always could have been an
19 amendment to the P's and G's. You still can go back to the
20 basic premises that the P's and G's are submitted by the
21 claimant. So it's the claimant that submits the P's and G's
22 that brings out the activities that should be reimbursed. At
23 the time they assumed that, they didn't need to do that.

24 MS. HIGASHI: Also, the costs categories are --

25 MR. PETERSEN: See, that's not a viable option
26 because the adjustment was made after the period to which I
27 could file amended P's and G's to capture that year's costs.

28 MS. STEINMEIER: So the time has expired is what

1 you're saying?

2 MR. PETERSEN: Yeah. It's a catch-22.

3 MS. HALSEY: I have a question.

4 CHAIRPERSON PORINI: Yes. Ms. Halsey, then we'll go

5 to Ms. Steinmeier.

6 MS. HALSEY: I'm just wondering how this works.

7 When you submit a claim to the Controller's Office for

8 reimbursement and they say this isn't a valid -- or this

9 portion of it is not valid, you can't -- can you submit

10 additional documentation to show why it isn't in the statute,

11 for instance?

12 MR. PETERSEN: If they request it. They didn't

13 request it in this case which is why they said they didn't

14 conduct an audit.

15 MS. HALSEY: Okay.

16 MR. CUNNINGHAM: I think had they asked the

17 question, "Where is it?" we would have provided them with the

18 same documents that Keith provided to the staff saying it's

19 in the executive order. Again, remember, the executive order

20 may also be a source of the mandate.

21 MR. PETERSEN: It's like the menu at Denny's. We

22 can point right at it and see it's right there. That's what

23 you're given.

24 CHAIRPERSON PORINI: Mr. Vorhies, did you want to

25 comment on that or add additional comments?

26 MR. VORHIES: I think the Commission also has to

27 think about whose responsibility is it to prove a claim? Is

28 it ours? Is it the Controller's Office to ask all the

1 questions or is it the claimant's responsibility to prove
2 their claim? Someplace along the line, the claimants have to
3 assume responsibility to include their claim.

4 If we deny a claim, that's asking the question. The
5 question is: What do you have to prove this claim if we deny
6 it? If they have something, they need to submit it, then
7 we'll certainly re-look at it, but we really make every
8 effort to work with these claimants. We make every effort
9 to -- I can cite a couple of examples of where we worked with
10 the claimants to encourage them to amend the P's and G's,
11 and they have done so.

12 Anyway, I just wanted to make it understood that we
13 make every effort to make these claims and the P's and G's as
14 well understood as possible so that we can refund and
15 reimburse the money that the claimants are due.

16 CHAIRPERSON PORINI: All right. Mr. Petersen?

17 MR. PETERSEN: I guess had we had the time machine I
18 could have gone back and attached the test claim decision to
19 the pending claim because it's in there. As far as who's got
20 the responsibility of going forward, they made the
21 adjustment. They did not ask for any documentation. They
22 did not contact the school district and say, "We've made this
23 adjustment and now talk us out of it." They just made the
24 adjustment.

25 In the audit world that I'm used to, in being a
26 state auditor for 11 years, we usually had to ask for
27 documentation before we made an adjustment, as far as common
28 practice, but the practice we have here is: He has 60,000

1 claims and he has to go through with a machete and move those
2 things along. This time the machete cut too deep. The test
3 claim allows for training. And I know he doesn't have time
4 to read test claims that were adopted 11 years ago. That's
5 what this process is for.

6 CHAIRPERSON PORINI: Mr. Petersen, may I ask a
7 question?

8 MR. PETERSEN: Um-hum.

9 CHAIRPERSON PORINI: When these claims were denied,
10 did anybody say, "Whoa, you're wrong"?

11 MR. PETERSEN: Yes. You have three years to file an
12 incorrect reduction claim, and that's what I did.

13 CHAIRPERSON PORINI: And, so, when you filed that,
14 you gave him the documentation or you gave the Controller's
15 Office the documentation that showed that training was
16 included?

17 MR. PETERSEN: When I filed the incorrect reduction
18 claim, yeah, I provided the documentation required by the
19 incorrect reduction, yes.

20 CHAIRPERSON PORINI: All right. Ms. Patton?

21 MS. PATTON: Well, I'd just like to comment that
22 Mr. Petersen and claimants are citing to the instructions for
23 completing the standard school crime forms, and, if you look
24 at your Bates page 53, I'm not necessarily seeing that it's a
25 requirement, because, in this document, it's listed as
26 suggestions from the Department of Education.

27 MR. PETERSEN: Except that the Commission adopted
28 the suggestions as a mandate. They adopted the instructions

1 in toto. And I also think a suggestion is somewhere between
2 an implicit requirement and an express requirement. I think
3 that a suggestion falls in between those two somewhere and
4 you have recognized implicit requirements as being
5 reimbursable.

6 MR. CUNNINGHAM: And, in fact, it did on this one
7 mandate.

8 MR. PETERSEN: I think we could have settled this
9 except for the fact that there's a new policy about training
10 costs under the P's and G's. I think that's our roadblock.

11 CHAIRPERSON PORINI: Any other questions?

12 Ms. Aronberg?

13 MS. ARONBERG: If there's no further discussion,
14 which there appears to be, so I'll wait to make my motion.

15 CHAIRPERSON PORINI: All right.

16 Ms. Faulkner?

17 MS. FAULKNER: I'm an interested party in this issue
18 because there's several other training issues coming up down
19 the road, but what I wanted to offer, at this point, is that
20 I have been a supervisor or a manager of accounting and
21 clerical staff for 26 years and I know of no way to implement
22 state or federal regulations and statutes without conducting
23 some kind of training to that staff.

24 I have clerical staff who can't always read laws.
25 Clerical staff can't always figure out how to put a practice
26 into motion. That's the job of a supervisor, and, to me,
27 that's training. To me, that's an inherent part of
28 implementing any statute or any change.

1 Thank you.

2 CHAIRPERSON PORINI: All right. Ms. Aronberg?

3 MS. ARONBERG: Move to adopt the staff

4 recommendation.

5 CHAIRPERSON PORINI: All right. We have a motion.

6 Do we have a second?

7 (No Response.)

8 CHAIRPERSON PORINI: All right.

9 Since there's no second on that motion, we'll move

10 to Ms. Steinmeier.

11 MS. STEINMEIER: I'd like to move that we find that

12 this is an incorrect reduction claim and that training should

13 be included.

14 CHAIRPERSON PORINI: All right.

15 Is there a second?

16 MR. BELTRAMI: Second.

17 CHAIRPERSON PORINI: All right. We have a motion

18 and a second from Mr. Beltrami.

19 Is there further discussion? Ms. Halsey?

20 MS. HALSEY: So is it correct that we're saying for

21 all future P's and G's that if training is required that is

22 has to be in the P's and G's?

23 CHAIRPERSON PORINI: I don't think we're saying

24 anything about that.

25 MR. BELTRAMI: What we're saying is that for

26 something that started in '91 under a certain set of

27 circumstances and understandings is what we're asking.

28 CHAIRPERSON PORINI: All right. Mr. Sherwood?

1 MR. SHERWOOD: One question. If we vote on this and
2 pass it, it's not really adjusting or changing our P's and
3 G's?

4 CHAIRPERSON PORINI: No.

5 MR. SHERWOOD: We're sending it back to the
6 Controller who --

7 MR. PETERSEN: This program has been phased out by
8 School Crimes II, so it's gone away.

9 MR. SHERWOOD: What I'm thinking is: What position
10 is the Controller in to act on this? Does this actually give
11 them the ability, from an audit standpoint, to include
12 training or are they still going to have a problem of looking
13 at the P's and G's and not seeing -- you're going to have to
14 analyze that and take a look at that.

15 MR. PETERSEN: It only applies to these four
16 claimants.

17 MR. VORHIES: But we still have the problem that
18 there really is no direction to pay for training from the
19 statute or from the P's and G's; and, in that since, what
20 good are the P's and G's? Why do we adopt P's and G's? I
21 mean, in some sense, are we not adopting P's and G's to
22 provide for the reimbursable -- so that the reimbursable
23 components are spelled out so that both the claimant can make
24 a bona fide claim for expenditures and that we have a means
25 of determining what those reimbursable components are?

26 I mean, this is -- I'm not too concerned about -- I
27 guess what I'm more concerned about is: Are we setting a
28 precedent here for future claims?

1 MR. SHERWOOD: I don't think we are for the future.
2 We're talking about this claim now. The staff can --
3 MR. VORHIES: But then there's going to be several
4 of these where the same thing happens, where we've
5 disallowed --
6 MR. SHERWOOD: Because of this timing problem?
7 MR. VORHIES: Exactly, right. Sure.
8 MR. SHERWOOD: Now, would this give you a reason,
9 possibly, to go back and look at the initial findings in more
10 detail, possibly?
11 MR. VORHIES: Oh, I'm sure that we would do that.
12 I'm sure that we would analyze whatever your decision is and
13 take it to our legal staff and they would make a
14 determination, then, if this is something that we can do
15 within our constitution and responsibilities.
16 MS. HALSEY: I have a question.
17 CHAIRPERSON PORINI: Yes, Ms. Halsey.
18 MS. HALSEY: Are you disagreeing that there's a
19 statute that requires training or are you just saying that
20 you haven't seen any and you don't know, or are you just
21 worrying about what the statute says?
22 MR. VORHIES: No. I don't think -- I think we've
23 all agreed here; even Mr. Petersen said that the statute does
24 not mention training, nor do the P's and G's mention
25 training. He's saying that the test claim mentions training,
26 but the training in the test claim was not translated over to
27 the P's and G's. And I'm saying I'm sorry about that, but I
28 don't know what to do about that.

1 MR. PETERSEN: And I don't hold it against him.

2 MR. VORHIES: You see, our hands are tied. Whatever
3 happens in the test claim needs to be translated into the P's
4 and G's, because that's really what we go by, the P's and G's
5 in the statute.

6 MR. CUNNINGHAM: But -- okay. So on the test claim
7 it has the training; it's the executive order which is the
8 equivalent of a statute. It is the same. Just like a
9 statute is the source of a mandate, the executive order is
10 just like a statute, and that's where the training
11 requirement is. The test claim just found that that was a
12 mandate.

13 CHAIRPERSON PORINI: All right. Pat, did you have a
14 comment? Then Mr. Sherwood.

15 MS. HART JORGENSEN: Well, I have a question with
16 the motion. Would it be that -- should it be just all
17 training costs, that the reduction should be incorrectly
18 reduced, or only for those for which there's verification of
19 the training? I mean, did you want it to be a blanket?

20 MS. STEINMEIER: Verification is part of the
21 process, Pat. I mean, if they can't prove that the training
22 occurred, then there's no way they're going to get a claim
23 under this -- this incorrect reduction claim or any claim
24 that's brought up.

25 MS. HART JORGENSEN: But that's why I'm bringing up
26 some of these. Some of the claims are filed. We don't see
27 what's given to the staff. We can't, necessarily, make a
28 determination as to whether or not verification was provided,

1 so I was just questioning whether it was just going to be a
2 blanket allowing the cost or to --

3 MS. STEINMEIER: Only those that are verified is my
4 assumption in my motion.

5 MS. HART JORGENSEN: Okay. And I might explain
6 that, in a lot of test claims, that we don't necessarily get
7 the information so we can determine whether or not they have
8 to verify it.

9 MR. PETERSEN: This is not a test claim.

10 MS. HART JORGENSEN: I understand that. This is an
11 IRC.

12 MS. STEINMEIER: We're talking about this various
13 specific test claim, and I don't think we're necessarily
14 setting precedents for all future claims.

15 MR. PETERSEN: And the Controller had no problem
16 with the amount or the reasonableness; it's just the issue.

17 MS. STEINMEIER: Which wasn't even mentioned.

18 MR. PETERSEN: An incorrect reduction claim is not
19 precedent setting, in any sense, to other matters. I think
20 where the decision should fall -- and this one was in a test
21 claim document. And, at that time, the standard was: You
22 didn't enumerate those things. That fairly circumscribes
23 what you do here today.

24 CHAIRPERSON PORINI: Mr. Vorhies?

25 MR. VORHIES: I was wondering if the staff looked at
26 the executive order when they made their analysis.

27 MS. HART JORGENSEN: I think Nancy can respond to
28 that.

1 CHAIRPERSON PORINI: Nancy?

2 MS. PATTON: Yes, we did. And that's why -- and

3 also Department of Finance also made the argument that we

4 looked at it as suggestions as part of their instructions

5 versus requirements.

6 MR. PETERSEN: And the Commission decided on that

7 nine years ago.

8 MR. BELTRAMI: Nancy, it also says whole workshop

9 schedule. Is that a suggestion?

10 MR. PETERSEN: Put us on a bus and take us there,

11 right.

12 CHAIRPERSON PORINI: All right.

13 MR. SHERWOOD: I have a comment.

14 CHAIRPERSON PORINI: Mr. Sherwood?

15 MR. SHERWOOD: Well, if we take this action and vote

16 on Ms. Steinmeier's motion and it goes through, I mean we

17 have to recognize this still goes back to the Controller's

18 Office and the Controller's Office still has no authority.

19 MR. PETERSEN: Excuse me. On this particular claim?

20 MR. SHERWOOD: On this particular claim. He has no

21 authority to look at these claims. And I would hope --

22 possibly go to the executive order, but he's going to have to

23 make his decision based on what information it has, as to

24 whether or not they will honor this as a --

25 MR. PETERSEN: Well, actually, what I believe the

26 law does in this case is just void their action as if it

27 never occurred.

28 MR. SHERWOOD: Would they still have to take another

1 action?

2 CHAIRPERSON PORINI: But they still have to either

3 pay the claim or deny it. They have to take some action.

4 MR. PETERSEN: Yeah, that's correct.

5 MR. SHERWOOD: This is difficult.

6 MR. BELTRAMI: Yes.

7 MR. PETERSEN: We try to settle the easy ones. It's

8 the difficult ones that get here.

9 CHAIRPERSON PORINI: It's certainly been a day for

10 conundrums.

11 All right. We have a motion and a second.

12 May we have role call.

13 MS. HIGASHI: Ms. Steinmeier?

14 MS. STEINMEIER: Aye.

15 MS. HIGASHI: Ms. Aronberg?

16 MS. ARONBERG: No.

17 MS. HIGASHI: Mr. Beltrami?

18 MR. BELTRAMI: Yes.

19 MS. HIGASHI: Ms. Halsey?

20 MS. HALSEY: Aye.

21 MS. HIGASHI: Mr. Lazar?

22 MR. LAZAR: Aye.

23 MS. HIGASHI: Mr. Sherwood?

24 MR. SHERWOOD: Aye.

25 MS. HIGASHI: Ms. Porini?

26 CHAIRPERSON PORINI: No.

27 MS. HIGASHI: Motion carries.

28 MR. PETERSEN: Thank you very much.

1 MR. CUNNINGHAM: Thank you.

2 MR. BELTRAMI: Madam Chair, would it be appropriate

3 at this time to consider the sole issue of training in the

4 future or from this point on or --

5 MS. HIGASHI: What I will offer to do is convene a

6 workshop or a meeting with the claimants' representatives and

7 with the State Controller's Office representatives so we can

8 talk about a solution that we might propose and can bring it

9 back to you.

10 CHAIRPERSON PORINI: Okay. Thank you.

11 MS. HIGASHI: This brings us to another easy item,

12 Item 10. This item will be presented by Ms. Shelton.

13 MS. SHELTON: Item 10 is the proposed parameters and

14 guidelines on the Peace Officers Procedural Bill of Rights

15 Program, otherwise known as POBAR. "The test claim

16 legislation provides procedural protections to peace officers

17 employed by local agencies and school districts when a peace

18 officer is subject to interrogation, is facing punitive

19 action or receives an adverse comment.

20 "Staff has made several modifications to the

21 claimant's proposed parameters and guidelines to conform the

22 parameters and guidelines to the Commissions' Statement of

23 Decision.

24 "The main issues in dispute involve reimbursement of

25 court costs supporting the agency's final administrative

26 decision issuing a disciplinary action, and the court costs

27 in defending claims filed under Government Code section

28 3309.5. For the reasons stated in the executive summary,

1 staff disagrees with these requests for reimbursement and
2 recommends that the Commission adopt the parameters and
3 guidelines modified by staff beginning on page 21."

4 Will the parties please state their names for the
5 record.

6 MR. TAKACH: Edward Takach, Labor Relations Officer
7 for the City of Sacramento.

8 MS. STONE: Pam Stone on behalf of the City of
9 Sacramento.

10 MS. CONTRERAS: Dee Contreras, Director of Labor
11 Relations for the City of Sacramento.

12 MR. BURDICK: And Allen Burdick, SB 90 service.

13 MR. HUIISH: Steve Huish, Vice President of the
14 Sacramento Police Officers' Association. I'm representing
15 PORAC (phonetic).

16 MR. LOMBARD: Jim Lombard, Department of Finance.

17 CHAIRPERSON PORINI: All right. Ms. Stone.

18 MS. STONE: Good morning -- good afternoon. We do
19 appreciate the work that staff has done with respect to this
20 draft staff analysis and what we would like to focus on is
21 the issue of court costs under 3309.5.

22 First of all, I think it's important to note that
23 your staff indicates that because, in essence, this
24 particular activity, defensive litigation over -- pursuant to
25 3309.5, is not specifically mentioned in the statement of
26 decision it cannot form the basis for reimbursable activity
27 in the parameters and guidelines.

28 And I would like to point out some issues to the

1 Commission as to why we disagree and why we think this is bad
2 policy. This particular test claim was filed in December of
3 1994. At that particular point in time, there was a much
4 different attitude towards the filing of test claims and the
5 presentation of test claims and the difference in the
6 function between a test claim and a filing of parameters and
7 guidelines.

8 At that point in time the attitude was when you file
9 a test claim you were taking a look to see what the actual
10 scope of the mandate is and whether or not you have a program
11 that is eligible for reimbursement as a reimbursable mandated
12 program.

13 So, therefore, what you would focus on would be the
14 elements of this program versus what activities were required
15 under the prior law. If your Commission examines your own
16 regulations, 1183, subsections (e) through (h), specify what
17 must be in a test claim for it to be considered.

18 It is required that the written narrative specify,
19 under subsection (3)(a), what activities -- what specific
20 activities were required under prior law or executive order,
21 and subsection (b) says what new program or higher level of
22 service is required. There's no requirement in the test
23 claim filing that there be a specification of each and every
24 activity that constitutes the new program or higher level of
25 service.

26 It has always been my understanding that when you
27 have the issue of the statement of decision, you are
28 describing what the program is that is reimbursable versus

1 what activities are specifically not reimbursable as they
2 were a function of prior law, as they are a function of
3 federal law or regulation, and that you take a look at what
4 specific activities are to be reimbursed when you get to the
5 issue of the development of parameters and guidelines.

6 This is the point in time when we take a look at the
7 actual program since the scope of the mandate has been
8 defined as a result of the statement of decision. So you
9 take a look at the statement of decision as being that which
10 defines what the scope of the mandate is and then you go to
11 the actual elements and activities that are reimbursable
12 through the development of the parameters and guidelines.

13 Your staff has said that your regulations, 1183.1,
14 speaks in terms of the activities found to be required. Yes.
15 One of the subsections says that the activities found to be
16 required under the statutes or executive orders that contain
17 the mandate or increased level of service.

18 Two things are missing from your regulations: One
19 is fund by whom and the second is found when. There's no
20 requirement in your regulations that for an activity to be
21 included in the parameters and guidelines it must be
22 specifically included in the statement of decision.
23 Otherwise, you are caught in a catch-22. Your regulations
24 would preclude reconsideration of your decision to include
25 the activity in the statement of decision and, yet, you could
26 not amend the parameters and guidelines to include the
27 specific activity because it was not mentioned in the
28 statement of decision.

1 It seems to me that this particular point in time is
2 the perfect time to examine the nature and extent to which
3 legal costs occasioned by 3309.5 are reimbursable at the time
4 of the initial consideration of the parameters and
5 guidelines. I think it's really important to keep in mind
6 that as the Commission has developed and regulations have
7 been adopted since the initial founding of the Commission in
8 1985, as I believe Ms. Halsey has mentioned, we have gone to
9 a much more legalistic, much more detailed analysis.

10 I mean, that has been part of the problems that have
11 been presented to your Commission today, whether or not
12 training should have been or was implicit in the P's and G's,
13 how test claims were filed six years ago. This is another
14 situation as it reflects the changing dynamics of the
15 Commission and the manner in which things are examined.

16 So what we are requesting is that attorneys' fees
17 occasioned by 3309.5, not the issue, I think, that staff
18 mentioned of all administrative review of the disciplinary
19 actions, that falls, to a large extent, within Skelly.
20 Skelly is not part of this test claim. This test claim is
21 the penumbra around Skelly. So I would like Ms. Contreras to
22 address the issue of the legal defense necessitated by
23 POBAR.

24 CHAIRPERSON PORINI: Ms. Contreras?

25 MS. CONTRERAS: Yes. Well, seeing from the rest of
26 your work this morning how very important it is that the P's
27 and G's reflect everything that might possibly arise in the
28 future, I'm sorry I didn't prepare more carefully for this

1 argument this morning. Let me say, as Pam has pointed out,
2 we're not talking about litigation of a completed civil
3 service case where they have a right to a writ of appeal on
4 that. That derives out of our own civil service rules and
5 our own process. This has nothing to do with a mandate
6 created by POBAR.

7 But there are many other situations in which POBAR
8 has created litigation potential so that it becomes a threat
9 that we have to deal with, in terms of resolving problems and
10 actual litigation over issues which the employee would never
11 had had and access to the courts absent POBAR.

12 As a practical matter, punitive transfer, as an
13 example, does not exist in the City of Sacramento under our
14 civil service rules. The management has the right to
15 transfer. The collective bargaining agreement has specific
16 language regarding management's ability to transfer for due
17 process. If a person disagrees with that, they have a
18 grievance procedure which is binding, with binding
19 arbitration of the issues regarding the collective bargaining
20 agreement, and yet, not have we theoretically -- but we've
21 actually been sued regarding seeking to move a person from a
22 particular assignment.

23 We've been threatened with litigation when we
24 attempted, based on budget closures, to close down a whole
25 unit of employees, and, in fact, wound up paying people six
26 months additional pay after we've taken them out of the paid
27 assignment, because, if we didn't do that, we would have
28 been sued in order to -- under POBAR, under the allegation

1 that even shutting down a unit based on fiscal issues is a
2 punitive transfer.

3 When the law was passed, nobody knew what a punitive
4 transfer was, and I'm not sure everybody knows today, but
5 we're very certain that they can exist in a lot of places
6 that nobody had ever thought about at the time this law was
7 passed. We have no civil service action equivalent to a
8 punitive transfer.

9 So I can't give you a Skelly letter that says, "I
10 intend to punitively transfer you. I intend to transfer you
11 as a result of discipline." And, yet, in fact, based on case
12 law caused by POBAR, we are required to do that. If we
13 don't, we will get sued because we failed to go through a
14 process that does not legally exist in our civil service
15 rules but it is mandated by POBAR.

16 So the mandate arises in a variety of directions.
17 It supersedes our collective bargaining agreement. It causes
18 litigation issues that could not exist but for it.

19 The concept of stigmatizing an employee or their
20 career, their promotability or the transferability, again,
21 doesn't exist in a common law remedy, except for defamation
22 or some process, but it's not, in any way, resolvable given
23 management's inherent ability to transfer, reassign, move,
24 assign work and otherwise assign employees except for limits
25 generated by the collective bargaining agreement; and, yet
26 every time you seek to move somebody, even consistent with
27 the collective bargaining agreement, litigation issues can
28 arise. The issue of -- anything that causes a decrease in

1 money is considered to be punitive.

2 As an example, we have a provision in our collective
3 bargaining agreement that assigns detective pay if you work
4 in investigations as a detective, logically enough, and the
5 collective bargaining agreement specifically says this is
6 assignment pay and it's not subject to POBAR, so removing
7 detective pay, when somebody leaves the unit, is not subject
8 to POBAR.

9 We have been threatened with and sued regarding that
10 issue. In a recent discipline case, we've moved people from
11 their assignment, because the assignment they were in
12 pending, in the investigation -- we could have put them on
13 administrative leave. Personally, I would assume that would
14 be more stigmatizing than anything. We didn't do that. We
15 simply moved them to a less vulnerable place while the
16 investigation was carried on. We had to go to court to
17 discuss whether or not we could do that.

18 We have been to court about whether we could take
19 take-home vehicles away from people at various times, even
20 though a take-home vehicle is, obviously -- or would seem
21 logically enough from an employer's perspective, not to be
22 the kind of thing that a person accrues a right to when
23 they're removed from the assignment. So the issues
24 surrounding litigation are very broad and they are
25 fundamental to management's right to operate, to assign, to
26 reassign, and to move people.

27 The fact that when this law was passed, the range of
28 behavior anticipated to be controlled in employers was

1 outrageous behavior and outrageous abuse of employees. It
2 has become a vehicle for attacking management's ability to
3 manage, to assign, to resign, to deploy forces and materials
4 on an ongoing basis.

5 The obvious issues around litigation arise in terms
6 of non-tenured employees, and the staff has addressed those
7 issues relative to the appeal rights that accrue. Obviously,
8 those people wouldn't have any right to court after they get
9 through exhausting whatever appeal rights they've never had
10 before, absent POBAR. So another gift to local government
11 for probationary and at-will employees.

12 If it's not -- the reality is -- and, if you look at
13 the history of POBAR, what it means is that it has been
14 expanded enormously to create more rights, greater rights,
15 and rights from different directions that existed at the time
16 of this past. The courts -- the fact of the courts'
17 continuous expansion of these rights makes clear that the
18 ongoing litigation regarding it is a problem and it's a
19 burden that local government continues to bear. And those
20 expansions are not related to rights that exist in other
21 arenas or based on other legislation or other activities.
22 They come straight out of POBAR and are directly related to
23 its impact in the daily workforce.

24 I think my recollection is that we talked about some
25 of this at the last hearing. Certainly, we've had
26 discussions regarding the staff. So I think, from our
27 prospective, it was inherent, throughout this process, that
28 this was one more of the pieces of the burden.

1 It's not one that occurs with enormous frequency,
2 but, when it does occur, it is costly. It takes a lot of
3 time. And, frankly, it often does a lot of damage to the
4 organization. So it's something that, from our perspective,
5 is really critical that it be included in your parameters and
6 guidelines in terms of resolutions of this.

7 MS. STONE: In conclusion, we'd like to point out
8 that section 3309.5 was included in the test claim. There's
9 no issue about it being in some statute that was not
10 alleged. I believe that the record does reflect that the
11 litigation aspects were discussed at the time the initial
12 statement of decision -- the initial test claim was heard and
13 it has been something that has been discussed throughout.

14 So, the fact that it is not a one-liner in the
15 statement of decision, this is not an issue that is coming
16 from left field. It has been discussed. It was discussed by
17 Ms. Contreras at the last meeting. And we respectfully
18 request that the element of costs, with regard to 3309.5, be
19 included in the parameters and guidelines.

20 CHAIRPERSON PORINI: All right. Mr. Lombard.

21 MR. LOMBARD: Jim Lombard, Department of Finance.
22 We would note that we made, in January, two concerns related
23 to the parameters and guidelines and the Commission staff
24 have addressed both our concerns and we concur with the
25 Commission's analysis.

26 CHAIRPERSON PORINI: All right. Questions from
27 members? Clarification, Camille?

28 MS. SHELTON: Basically, just on page 3, and,

1 getting into the staff analysis, we did try to clarify what
2 is required of a claimant for filing a test claim relating to
3 a statute. And the constitution, Article XIII(b), requires
4 that in order for reimbursement to come from the state there
5 has to be a finding of a new program or a higher level of
6 service.

7 The implementing legislation in Government Code
8 section 17514 also requires that there has to be a finding
9 under our costs mandated by the state. These are test claim
10 issues. So there has never been a finding by the Commission
11 that 3309.5 constitutes a reimbursable state mandated
12 statute.

13 I agree that the Commission's regulations do allow
14 the Commission to include other activities in the parameters
15 and guidelines that were not specifically stated in either
16 the statement of decision or in the statutes in question.
17 We've done that in these parameters and guidelines.

18 For example, the first part was allowing
19 reimbursement for all the administrative activities including
20 ongoing activities with the recognition that there are a lot
21 of court cases and litigation going on, so that we agree that
22 it is reasonable for claimants to be reimbursed for ongoing
23 training, for ongoing changes to their policies and
24 procedures, to reflect those changes in the law.

25 Those types of cases or activities stem directly
26 from the statutes in question. This is a whole other
27 statute, which, I agree, that wasn't included in the POBAR
28 legislation, but there was never an analysis, as required by

1 the Commission's regulations, that that statute constitutes a
2 new program or higher level of service.

3 A staff member analyzed it and there has never been
4 a statement from the claimants noting an omission in our
5 staff analysis or in the statement of decision. You know,
6 we're not proposing to -- we have not analyzed the substance
7 of 3309.5, so they haven't given you a recommendation on
8 that; that would be up to the Commission.

9 If the Commission wants to include legal defense
10 costs, under 3309.5, I believe the only way you can do that
11 is to find that the legal defense costs are reasonably
12 related to the 3304 subdivision (b), administrative appeal.
13 I would note, though, that 3309.5 applies to all of the POBAR
14 action, not just the administrative appeal. It kind of seems
15 to me, from Ms. Contreras' testimony, that most of the cases
16 center around the punitive actions and so her argument, I
17 would assume it to be, is that it's logical to put it there.

18 So, certainly, the Commission can move in that
19 direction.

20 CHAIRPERSON PORINI: Other questions from members?

21 MR. HUIISH: I have a statement. Yeah, representing
22 the Police Officers' Association and PORAC, we came into this
23 a little bit late. We are both against any reimbursement to
24 the city for any type of P.O.B.R. activities. P.O.B.R. bars
25 the agency from violating the officers' rights. We don't
26 think that they should be able to be reimbursed for that
27 activity. That's basically it.

28 CHAIRPERSON PORINI: All right. So you support

1 staff's recommendation?

2 MR. HUIISH: Yeah.

3 CHAIRPERSON PORINI: All right. Mr. Burdick?

4 MR. BURDICK: Madam Chair and members, Allan
5 Burdick. Maybe I can just simplify this a little bit, I
6 think, of what the argument is and how we see it and how they
7 see it without talking about all the sections.

8 Essentially, I think, what staff's proposal is, as
9 we would see it, you would actually develop parameters and
10 guidelines as part of your test claim, because you would want
11 to include all of those activities as part of the discussion
12 at the initial session.

13 How we see this particular activity is that if we
14 hadn't had POBAR, we would not have any of these lawsuits.
15 And so what we're looking at is: You have, now, new actions
16 that an officer can take against the city because of the
17 statute that grew out of this program, and it's only those
18 activities that we want to seek reimbursement for.

19 So, for example, if the Commission members out
20 there, if you were -- if a suit was filed against you for
21 your action serving on this Commission, then it would be
22 directly related to the fact that you are a commissioner on
23 the Commission on State Mandates; it would not be related to
24 the fact that you're probably a state employee. If there was
25 an action taken against you because you did something that
26 falls on absenteeism or whatever, that would fall under
27 regular state statute and personnel rules.

28 I think that's kind of what he's saying is that

1 there are those things which come under your regular
2 personnel rules for all employees, and those things are not
3 types of things that we're saying we should be reimbursed for
4 court activities; but where something is directly related
5 to -- came out of it and is only the basis of that claim, it
6 only exists because of this new mandate that you've agreed
7 that the mandated activities are mandates, that we should be
8 entitled, then, to reimbursement for the costs of those
9 programs.

10 So that's what I'm trying to do is separate out and
11 say there's a whole group of things of activities that are
12 currently rights of employees under Skelly, under other
13 personnel rules, which would not be covered under this; but,
14 for those things that are unique to the fact that they are
15 claiming they had a right, because of this POBAR statute now,
16 and we are alleging that the city or the county did not,
17 therefore, follow those rules, or they, then, are going to
18 file an action based on that, we're saying, in that case, we
19 have -- you know, the city or county has no option except
20 to -- if a lawsuit is filed by an officer, except to defend
21 itself against that officer on that allegation, and they
22 should be paid for the cost, even if it just simply means
23 writing a letter and responding to them and maybe agreeing
24 with them, but that would be part of the litigation process.

25 CHAIRPERSON PORINI: Ms. Shelton?

26 MS. SHELTON: The arguments that Mr. Burdick has are
27 relevant in a test claim hearing. Those are relevant to
28 determine whether a statute constitutes a new program or

1 higher level of service. We haven't even reached those
2 issues because, procedurally, the Commission has never made a
3 finding on that at the test claim phase. I'm not going to
4 get into the substance unless the Commission would like that
5 to happen.

6 CHAIRPERSON PORINI: Other comments or questions?

7 MR. BELTRAMI: Mr. Burdick, can't almost anyone from
8 the action that we take lead to a lawsuit?

9 MR. BURDICK: That's what we're saying; they could.

10 MR. BELTRAMI: Every issue we take up now, we're
11 going to have to tack on -- we've been starting to tack on
12 things. People are saying, well, what about redirected time
13 of employees --

14 MS. STONE: Excuse me, Mr. Beltrami. This
15 particular statute --

16 MR. BELTRAMI: Would you let me finish, please.

17 CHAIRPERSON PORINI: Ms. Stone, please.

18 MR. BELTRAMI: And now we're going to tack on a
19 lawsuit possibility.

20 Isn't there a lawsuit possibility in almost
21 everything we do in life?

22 MR. BURDICK: This is different because the right is
23 given in POBAR. The statute that you found the mandate
24 includes giving the authority to an officer to file an action
25 on that particular case, so that was part of the test claim.
26 What we look at --

27 MR. BELTRAMI: That wasn't in the statute. Would
28 you not be permitted to find a lawyer down the street who

1 would file a lawsuit, then?

2 MR. BURDICK: I mean, I don't know, legally, as an
3 attorney, whether you'd have to write an action against them
4 or not, but this statute, specifically, gives them the right
5 to do that. In the legislation that outlines the
6 Commission's rights, it indicates in there that if we wanted
7 to take action against the Commission, how you do that, where
8 you do that, when and under what conditions. And, so, if
9 that happens to be the case -- all I'm just saying is where
10 in the statute it specifies and gives the rights. In those
11 kinds of cases, we believe there should be reimbursement.

12 In those cases where it is not related,
13 specifically, to this issue where a law enforcement officer
14 feels -- let's say it's a sexual harassment case, obviously,
15 that would not be covered. It has to be directly related to
16 the specific activities under POBAR, because, in that
17 statute, it gives that officer the right, then, to file an
18 action against the city.

19 And we're saying that the city has the obligation to
20 defend itself, just like we would say that if an action was
21 filed against the Commission, the staff would have the right,
22 in terms of spending staff time on that activity, because of
23 the fact that that's part of the Commission activity; that's
24 directly related to it.

25 And that's all we're saying is that this action is
26 directly related to part of that program, and it's not
27 separate and unique. As I say, there's not going to be a lot
28 of these cases as it relates to them. I mean, Ms. Contreras

1 has mentioned it a few times that it happened in the large
2 City of Sacramento, but I would say that, in general, these
3 are the kinds of things that do not happen frequently.
4 They're not a rule of thumb in most cities and counties in
5 California. In the larger jurisdictions, you're liable to
6 find these actions are more likely to happen.

7 MS. CONTRERAS: Can I add something to that?

8 Generally speaking, there is no common law right for
9 an employee to have a right to an assignment, a job or a
10 task, so, no, an employee can't -- if you work anyplace and
11 you have an employee and I say, "You, go take this case and
12 do that work over at that desk," if it's in your
13 classification, you can't say, "I don't want to do that. I'm
14 going to go sue you because I think that's a rotten
15 assignment. I'm going to do something about it."

16 So the fundamental answer to that question is no,
17 but POBAR, specifically, on its face, says -- and the
18 employee has the right to take these issues directly to
19 court. Don't pass go. Don't collect \$200. Sue them. So it
20 creates an opportunity that, in fact, doesn't exist.

21 And if you believe your employer has the issue about
22 stigmatizing an employee, for example, an employee can sue
23 for defamation as anybody can, but defamation has a
24 relatively high standard of proof. It doesn't come because
25 you think your supervisor doesn't like you. It doesn't come
26 because you don't like your supervisor.

27 So, as a practical matter, this creates a whole
28 additional obligation. And I am flipping now through my

1 testimony, the first time I appeared here for the test claim.
2 I did talk about litigation. I didn't identify it as a
3 specific issue, but, in several places, I talked about the
4 fact that we are exposed to litigation and we've been
5 involved in litigation on these issues. So I think whether
6 we artfully stated it at that time or not, it's clear that we
7 recognized and presented to you the reality that litigation
8 of these issues does exist and that we can be sued in ways
9 that would not be possible for any other employee.

10 If I transfer you to another building, another room,
11 another office, you can't go down to the courthouse and file
12 a lawsuit getting that turned over. In fact, you have no
13 remedy. You know, your remedy is: That's part of
14 employment. You know, you have a lot of opportunities out
15 there. Perhaps you want to work for somebody else.

16 Even with a collective bargaining agreement -- I
17 mean, in this case, we're not talking about where we do
18 anything that violates the collective bargaining agreement,
19 because, typically, we don't, and yet the employee can
20 litigate the issue. So it's a much higher level of exposure,
21 from an employer's perspective, than just -- you know,
22 obviously, if you discriminate against an employee, yes,
23 there are many actions you can take for which you will be
24 sued, but they don't arise from something as pointedly
25 directed as this is relative to individual employees.

26 CHAIRPERSON PORINI: Thank you.

27 Ms. Shelton, did you --

28 MS. SHELTON: Staff agrees that there was a lot of

1 discussion about litigation at the test claim hearing. And,
2 you know, certainly we had to get into that litigation to
3 determine how much of this test claim was different than
4 prior law through Skelly or through the due process clause of
5 the constitution. So there was a lot of discussion about
6 litigation.

7 The Commission's regulations just simply require
8 that a test claimant, in their narrative, provide a
9 description of how the statute imposes a new program or
10 higher level of service. Throughout the filings, those
11 briefs and narratives from the claimant have been limited to
12 Government Code sections 3303, 3304, 3305, and 3306. There
13 has never been any analysis, briefing or discussion about
14 3309.5 until the P's and G's.

15 CHAIRPERSON PORINI: Do the claimants disagree with
16 that statement? Has there been any analysis of that
17 particular section?

18 MS. STONE: There has been no request by staff for
19 analysis. We have gone -- the only time we have taken a look
20 at 3309.5 is when the parameters and guidelines were filed.
21 Department of Finance raised the issue. We've had a
22 prehearing conference on it, so 3309.5 specifically has been
23 an issue since at least January of this year in regard to the
24 parameters and guidelines.

25 CHAIRPERSON PORINI: In regard to the parameters and
26 guidelines but not the test claim.

27 MS. STONE: 3309.5 was not specifically analyzed by
28 staff, by claimant or the Department of Finance as a separate

1 issue in the test claim.

2 CHAIRPERSON PORINI: Thank you.

3 MR. BURDICK: This takes us back to our basic issue,
4 you know, where it really discusses, you know, what is the
5 test claim role and what is the parameters and guidelines. I
6 mean, we've always seemed to be -- the test claim part is the
7 general part and gives you the direction over what it is that
8 the Commission believes contains a general mandate.

9 When you get to parameters and guidelines, that's
10 where you really begin looking at the details because you may
11 not get there. You may stop us and deny it. You did it
12 twice this morning. And so we haven't gotten to the
13 parameters and guidelines stage to look at all the details.
14 And that's -- you know, and, essentially, we're almost
15 arguing that you've got to do your parameters and guidelines
16 before you do your test claim.

17 And I think it's a basic philosophical difference we
18 have, in the interpretation with staff, I think, of all local
19 government -- I think it was presented partially in what was
20 said by the school district representatives, and I know it is
21 by the local city and county representatives is that that is
22 the purpose of parameters and guidelines.

23 It's just like regulations are flushing out what is
24 in the statute, and that's the same thing with parameters and
25 guidelines; you flush them out. We've put those out there.
26 This has been discussed over the last six months. So it's
27 not like a surprise that's come up or anything else.

28 We've talked about the litigation in the claim. We

1 may not have written anything in the test claim when it was
2 filed that specifically identified that, but it was
3 discussed, it was included, it was put in our parameters and
4 guidelines, and it's been debated. That's how we see the
5 process working. And we get to the point of all the sudden
6 saying, well, you didn't include something in your original
7 test claim. We thought that's the purpose of P's and G's.

8 And I think, as you mentioned, that's why there
9 needs to be this hearing that Paula is going to convene and
10 get back to us and decide, and that's why we called them --
11 you know, it seems that's the purpose of parameters and
12 guidelines is to get into the details, and that's exactly
13 what we intended to do.

14 CHAIRPERSON PORINI: All right. Further questions,
15 comments? Ms. Steinmeier?

16 MS. STEINMEIER: Although I do believe that certain
17 litigation, within very narrow limits -- and this is the
18 problem here: They must flow directly from POBAR, because,
19 prior to POBAR, you still have the right to sue here. The
20 problem is: We have nothing in actual text where it's been
21 analyzed, and this is the mind bender today, and you can't
22 prove something that we're going to do here and have it so
23 accurate that the Controller's Office will have no doubt
24 about which ones to pay and which ones not to pay; and that's
25 my problem with adding that today.

26 I don't know how to do that and staff has not had
27 the opportunity to actually flush something out, so --

28 MS. CONTRERAS: Typically, litigation for POBAR

1 identifies on its face that it's filed pursuant to --

2 MS. STEINMEIER: It's actually --

3 MS. CONTRERAS: You have to identify how you got
4 there.

5 MS. STEINMEIER: Yeah, but you can allege something
6 that wasn't true, too. That happens all the time in
7 lawsuits. Nice try but somebody could allege it was POBAR
8 when it was really Skelly or something else, or both.

9 MS. CONTRERAS: We would not allege that the
10 employees would do such a thing.

11 MS. STEINMEIER: That's not narrow enough for this
12 Commission. It needs to be far more specific, and,
13 therefore, our staff has not had the opportunity, and it's
14 not fair to Camille, to have her draft something on the spot
15 in the next five minutes. I'm not going to do that to you,
16 Camille. If there's enough interest on the part of at least
17 three other commissioners, because we might want to include
18 this and give time to do it, than that's what I need to do,
19 but that's only one commissioner's opinion.

20 So where are the rest of you?

21 CHAIRPERSON PORINI: Well, I think I'll say, since
22 I'm a non-attorney, I was taken by Mr. Burdick's non-attorney
23 analysis of adopting regulations to implement statutes, and,
24 unfortunately, having served in the capacity on a variety of
25 boards and commissions that are forced to adopt regulations
26 to implement statute, there's the body called Office of
27 Administrative Law, and if something's not specifically in
28 the statute, they throw out the regulations, so I feel very

1 uncomfortable adopting something that wasn't part of the test
2 claim.

3 MR. BURDICK: Can I just respond?

4 MR. BELTRAMI: Madam Chair, why do we need the
5 parameters and guidelines? Why don't we just use the test
6 claim?

7 CHAIRPERSON PORINI: Well, I also think we heard, in
8 one of the earlier arguments, Mr. Beltrami, that the test
9 claim needs to include all of the specific code sections that
10 are going to be discussed.

11 MS. STONE: What's included in the test claim -- it
12 was a specific statute that was alleged in the test claim.
13 There's no issue that this particular statute was included in
14 the test claim. That's not the issue. This was --

15 CHAIRPERSON PORINI: I already asked that question
16 earlier and I was told no.

17 MS. STONE: You asked whether it was analyzed; that
18 is a different issue. It was included, so it was part of the
19 test claim.

20 MR. BURDICK: It's part of what we allege.

21 MS. STONE: It's part of the discussion. The
22 difference being is that nobody, in the discussion, said,
23 "This discussion refers to 3309.5." What we would like to
24 see is that this matter be sent to staff to examine the issue
25 of 3309.5 so this particular provision is narrowly drafted.

26 We agree with Ms. Steinmeier and Ms. Shelton that
27 this is a very narrow issue. This is why we tried to include
28 it properly in the parameters and guidelines and we are

1 suggesting that this particular issue be narrowly crafted in
2 the parameters and guidelines. We're not suggesting that it
3 be a blanket issue.

4 CHAIRPERSON PORINI: Camille?

5 MS. SHELTON: A couple of things. The first note,
6 the Commission does not have unlimited discretion of the
7 parameters and guidelines. You are bound by the
8 constitution. You're bound by the Government Code sections.
9 And, at the test claim phase, the constitution and the
10 Government Code sections say that the Commission has to make
11 findings relating to a new program or higher level of service
12 and costs mandated by the state on a particular statute at
13 the test claim phase; only then can you move on and proceed
14 to the parameters and guidelines.

15 I will agree that, with the parameters and
16 guidelines, there are different activities in the parameters
17 and guidelines than what was discussed at the test claim
18 phase, but the only difference is that those activities stem
19 directly from the statutes already determined by the
20 Commission to impose a reimbursable state mandated program
21 and are reasonably related, and the Commission's authority
22 for that is it's own regulation which allow them to expand in
23 the parameters and guidelines and lists out the different
24 activities, but they have to stem directly from a statute
25 that has already been determined by the Commission to impose
26 a reimbursable state mandated program.

27 If the Commission wants us to take this back and to
28 draft language to include some type of legal defense costs, I

1 think the Commission would have to make a finding that legal
2 defense costs are reasonably related to the administrative
3 appeal under the Commission's regulations. We cannot, now,
4 take it back to make a determination whether 3309.5
5 constitutes a new program or higher level of service.

6 MS. STEINMEIER: We'd have to amend our side, is
7 that correct, or just make a finding today before we --

8 MS. SHELTON: Right. You have to make a finding
9 that the legal defense costs, however narrowly limited you
10 wanted to make that, stems from and is reasonably related or
11 is a reasonable method of complying with the 3304 subdivision
12 (b) right to an administrative appeal.

13 CHAIRPERSON PORINI: Further comments?

14 MS. STEINMEIER: I don't hear enough interest to
15 make a motion. If I heard at least three or four of the
16 others state that, then I would make that motion, but I'm not
17 going to make that finding and to have staff --

18 MR. BELTRAMI: Well, I'll make the motion.

19 MS. STEINMEIER: You will?

20 MR. BELTRAMI: Yes.

21 MS. STEINMEIER: Well, I'll second it. Let's see if
22 we can get more interest over here.

23 CHAIRPERSON PORINI: All right. You have a motion
24 and a second, but I think staff needs to be very clear about
25 what this motion is.

26 MR. BELTRAMI: We're making a finding that there is
27 a direct connection on the legal costs, whatever that section
28 was.

1 CHAIRPERSON PORINI: 3309.5.

2 MR. BELTRAMI: 3309.5 as an adjunct to the rest of

3 our findings that are --

4 MS. SHELTON: Is your motion -- let me ask you: Is

5 your motion that legal defense costs, under 3309.5, are

6 reasonably related under the Commission's regulations to the

7 activity of the administrative appeal already bound by the

8 Commission to constitute a reimbursable state mandated

9 activity?

10 MR. BELTRAMI: 3304 and all the other --

11 MS. SHELTON: Right, I know. I'm sorry. They

12 included it under the activity of the administrative appeal.

13 So is your motion that the legal defense costs are

14 reasonably related -- the legal defense costs associated with

15 a 3309.5 action are reasonably related to the right to

16 administrative appeal?

17 MR. BELTRAMI: Specifically related, yes.

18 MS. HIGASHI: Reasonably related.

19 MS. HART JORGENSEN: Reasonably related.

20 CHAIRPERSON PORINI: All right. We have a motion

21 and a second.

22 Is there further discussion?

23 (No Response.)

24 CHAIRPERSON PORINI: Hearing none, may we have role

25 call.

26 MS. HIGASHI: Mr. Beltrami?

27 MR. BELTRAMI: Yes.

28 MS. HIGASHI: Ms. Halsey?

1 MS. HALSEY: No.

2 MS. HIGASHI: Mr. Lazar?

3 MR. LAZAR: No.

4 MS. HIGASHI: Mr. Sherwood?

5 MR. SHERWOOD: No.

6 MS. HIGASHI: Ms. Steinmeier?

7 MS. STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Aronberg?

9 MS. ARONBERG: No.

10 MS. HIGASHI: Ms. Porini?

11 CHAIRPERSON PORINI: No.

12 MS. HIGASHI: Motion fails.

13 CHAIRPERSON PORINI: All right. Does anyone want to

14 take a stab at another motion?

15 MS. STEINMEIER: Yes, I'll move staff's analysis.

16 MS. HALSEY: I'll second it.

17 CHAIRPERSON PORINI: All right. I have a motion by

18 Ms. Steinmeier to adopt staff's recommendation and a second

19 by Ms. Halsey.

20 Is there any further discussion?

21 (No Response.)

22 CHAIRPERSON PORINI: Hearing none, may we have role

23 call.

24 MS. HIGASHI: Ms. Aronberg?

25 MS. ARONBERG: Aye.

26 MS. HIGASHI: Mr. Beltrami?

27 MR. BELTRAMI: No.

28 MS. HIGASHI: Ms. Halsey?

1 MS. HALSEY: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MR. LAZAR: Aye.

4 MS. HIGASHI: Mr. Sherwood?

5 MR. SHERWOOD: Aye.

6 MS. HIGASHI: Ms. Steinmeier?

7 MS. STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Porini?

9 CHAIRPERSON PORINI: Aye.

10 MS. HIGASHI: Motion carries. Thank you very much.

11 Okay. I have one item of report that since our

12 last hearing the Commission's Local Claims Bill has been

13 signed by the governor, so all of the incorrect reduction

14 claims that needed to be funded and the Open Meetings Act, as

15 well as the new mandates, have now been approved and the

16 appropriations are in place for payment.

17 Other than that, I have detail in the executive

18 director's report about future agendas. I'd like to note

19 that for the August hearing we will have a very long hearing,

20 as well, we expect, and what we will do in that case is

21 knowing how much longer it may probably go is we would like

22 to set it up so we have a time certain established for a

23 lunch break so we can all go out to lunch and come back at a

24 time certain, and we'll put those times in the agenda.

25 I'd also like to remind the public and Commission

26 members that if you're available today between 3:00 and 5:00,

27 the Commission staff is hosting an office open house at

28 980 9th Street, Suite 300. There's a rulemaking --

1 CHAIRPERSON PORINI: Just a second, Paula. Okay.

2 Thank you.

3 MS. HIGASHI: -- at our offices at 1:30, and what
4 I'd like to do is confer with the interested party
5 representatives and State Controller's Office staff to
6 determine when we can set up the meeting to discuss how we
7 might address the issue of omissions and prior parameters and
8 guidelines, and we'll report back to you on that issue.

9 Any questions?

10 CHAIRPERSON PORINI: All right. Do we have any
11 comments from members of the public?

12 (No Response.)

13 CHAIRPERSON PORINI: That concludes our regular
14 business, and, at this point in time, we'll go into our
15 closed executive session. So, if I could ask folks to leave
16 the room, except for the staff members, the Commission will
17 now meet in closed executive session pursuant to Government
18 Code section 11126 (e) to confer with and receive advice from
19 legal counsel for consideration and action as necessary and
20 appropriate upon pending litigation listed on the published
21 notice and agenda and Government Code Section 11126
22 subdivision (a) and 17527 to confer on personnel matters
23 listed on the published notice and agenda.

24 Thank you.

25 (Whereupon the Commission met in closed session.)

26 CHAIRPERSON PORINI: All right. We have adjourned
27 our closed session at 1:24. And the Commission -- I will
28 report that the Commission met in closed executive session

1 pursuant to Government Code section 11126 subdivision (e) to
2 confer with and receive advice from legal counsel for
3 consideration and action as necessary and appropriate upon
4 pending litigation listed in the published notice and agenda,
5 and Government Code section 11126 subdivision (a) and 17527
6 to confer on personnel matters listed on the published notice
7 and agenda.

8 With that, our closed -- our session is adjourned.

9 Thank you.

10 (Whereupon the proceeding concluded at 1:24 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
_____)

I, STACEY L. HEFFERNAN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported to the best of my ability, in shorthand writing, of those proceedings; that thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 134, herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER: Annette Porini, Chairperson

JURISDICTION: Commission on State Mandates

CAUSE: Public Hearing held on July 27, 2000

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 3rd day of August, 2000.

STACEY L. HEFFERNAN, CSR, RPR
NO. 10750

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